9–10–97
Vol. 62 No. 175
Pages 47551–47744

# federal register

Wednesday
September 10, 1997

**Briefings on how to use the Federal Register**
For information on briefings in Boston, MA, see the announcement on the inside cover of this issue.

**Now Available Online**

***Code of Federal Regulations***

***via***

***GPO Access***

*(Selected Volumes)*

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**The Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

**The seal of the National Archives and Records Administration authenticates this issue of the Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

**The Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 60 FR 12345.

## SUBSCRIPTIONS AND COPIES

| | |
|---|---|
| **PUBLIC** | |
| **Subscriptions:** | |
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |
| **Single copies/back copies:** | |
| Paper or fiche | **512–1800** |
| Assistance with public single copies | **512–1803** |
| **FEDERAL AGENCIES** | |
| **Subscriptions:** | |
| Paper or fiche | **523–5243** |
| Assistance with Federal agency subscriptions | **523–5243** |

**FEDERAL REGISTER WORKSHOP**

### THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations

**WHO:** Sponsored by the Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### BOSTON, MA

**WHEN:** September 23, 1997 at 9:00 am.

**WHERE:** John F. Kennedy Library
Smith Hall
Columbia Point
Boston, MA 02125

**RESERVATIONS:** 1–800–688–9889 x0

Printed on recycled paper containing 100% post consumer waste

# Contents

**Federal Register**

Vol. 62, No. 175

Wednesday, September 10, 1997

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Rural Housing Service
*See* Rural Utilities Service
NOTICES
Privacy Act:
Systems of records, 47622–47623

**Animal and Plant Health Inspection Service**
RULES
Plant-related quarantine, domestic:
Mediterranean fruit fly, 47553–47558
Oriental fruit fly, 47551–47553

**Antitrust Division**
NOTICES
Competitive impact statements and proposed consent judgments:
USA Waste Services, Inc., et al., 47680–47689
National cooperative research notifications:
Advanced Lead-Acid Battery Consortium, 47689–47690
Asymmetrical Digital Subscriber Line Forum, 47690
Corporation for National Research Initiatives, 47690
Gas Utilization Research Forum, 47690–47691
National Center for Manufacturing Sciences, Inc., 47691
National Electronics Manufacturing Initiative, 47691
Petrotechnical Open Software Corp., 47691

**Census Bureau**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 47624–47625

**Commerce Department**
*See* Census Bureau
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
*See* Technology Administration

**Commission of Fine Arts**
NOTICES
Meetings, 47650–47651

**Commodity Futures Trading Commission**
PROPOSED RULES
Commodity Exchange Act:
Risk disclosure statements; distribution by futures commission merchants and introducing brokers, 47612–47617
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 47651

**Comptroller of the Currency**
RULES
Riegle-Neal Interstate Banking and Branching Efficiency Act; implementation:
Interstate branches used primarily for deposit production; prohibition, 47728–47738

**Defense Department**
NOTICES
Meetings:
Defense Intelligence Agency Science and Technology Advisory Board, 47651

**Defense Nuclear Facilities Safety Board**
NOTICES
Meetings; Sunshine Act, 47651

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Meetings:
Beryllium Rule Advisory Committee, 47651–47652
Environmental Management Site-Specific Advisory Board—
Fernald Site, 47653
Kirtland Area Office (Sandia), 47652–47653
Pantex Plant, TX, 47652
Hydrogen Technical Advisory Panel, 47653–47654

**Environmental Protection Agency**
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Dimethomorph
Correction, 47560–47561
Triadimefon, 47561–47568
PROPOSED RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 47619–47621
NOTICES
Pesticide registration, cancellation, etc.:
Dekalb Genetics Corp., 47662–47663
EM Industries Inc./Rona et al., 47663–47664
Monsanto Co., 47664–47665
Novartis Seeds, 47665–47666
Toagosei Co., Ltd., 47666
Superfund; response and remedial actions, proposed settlements, etc.:
Automatic Die Casting Site, MI, 47666–47667

**Executive Office of the President**
*See* Management and Budget Office

**Export-Import Bank**
NOTICES
Meetings:
Advisory Committee, 47667

**Farm Credit Administration**
NOTICES
Meetings; Sunshine Act, 47667

**Federal Communications Commission**
NOTICES
Meetings:
Federal-State Joint Board on Universal Service
Non-rural carriers; forward-looking cost mechanisms; workshops, 47667–47668

Rulemaking proceedings; petitions filed, granted, denied, etc., 47668

**Federal Deposit Insurance Corporation**
**RULES**
Riegle-Neal Interstate Banking and Branching Efficiency Act; implementation:
Interstate branches used primarily for deposit production; prohibition, 47728–47738

**Federal Energy Regulatory Commission**
**NOTICES**
Hydroelectric applications, 47661–47662
*Applications, hearings, determinations, etc.:*
Algonquin Gas Transmission Co. et al., 47654–47655
Cargill-IEC, L.L.C., 47655
Cleveland Electric Illuminating Co., 47655
Colorado Interstate Gas Co., 47655
El Paso Natural Gas Co., 47656
Great Lakes Gas Transmission L.P., 47656
Midcoast Interstate Transmission, Inc., 47657
Mid Louisiana Gas Co., 47656–47657
Midwestern Gas Transmission Co., 47657
MIGC, Inc., 47657
Mojave Pipeline Co., 47658
NorAm Gas Transmission Co., 47658
Northwest Pipeline Corp., 47658
Ozark Transmission System, 47658–47659
Pacific Gas Transmission Co., 47659
PPM Four LLC, 47659
Sea Robin Pipeline Co., 47659
Tennessee Gas Pipeline Co., 47659–47660
Toledo Edison Co., 47660
Tuscarora Gas Transmission Co., 47660–47661
Williston Basin Interstate Pipeline Co., 47661
Young Gas Storage Co., Ltd., 47661

**Federal Maritime Commission**
**NOTICES**
Freight forwarders licenses:
Stevens Forwarders, Inc., et al., 47668

**Federal Mine Safety and Health Review Commission**
**NOTICES**
Meetings; Sunshine Act, 47693–47694

**Federal Railroad Administration**
**NOTICES**
Exemption petitions, etc.:
Long Island Rail Road et al., 47718–47719
Union Pacific Railroad, 47720

**Federal Reserve System**
**RULES**
Riegle-Neal Interstate Banking and Branching Efficiency Act; implementation:
Interstate branches used primarily for deposit production; prohibition, 47728–47738
**NOTICES**
Banks and bank holding companies:
Change in bank control, 47669
Formations, acquisitions, and mergers, 47669

**Federal Trade Commission**
**NOTICES**
Prohibited trade practices:
London International Group, Inc., 47669–47670

**Fine Arts Commission**
*See* Commission of Fine Arts

**Fish and Wildlife Service**
**NOTICES**
Endangered and threatened species:
Recovery plans—
Grizzly bear, 47677–47678
Meetings:
Klamath Fishery Management Council, 47678

**Food and Drug Administration**
**NOTICES**
Biological product licenses:
Central Georgia Plasma Lab, Inc., 47670–47671

**Foreign-Trade Zones Board**
**NOTICES**
*Applications, hearings, determinations, etc.:*
Massachusetts
Massachusetts Heavy Industries, Inc.; shipbuilding facility, 47625–47626

**Health and Human Services Department**
*See* Food and Drug Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration

**Health Resources and Services Administration**
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 47671–47672

**Housing and Urban Development Department**
**PROPOSED RULES**
Public and Indian housing:
Replacement housing factor in modernization funding, 47740–47743

**Immigration and Naturalization Service**
**NOTICES**
Committees; establishment, renewal, termination, etc.:
Immigration Matters District Advisory Council (New York), 47692–47693
Meeting, 47691–47692

**Indian Affairs Bureau**
**NOTICES**
Environmental statements; notice of intent:
Nambe Indian Reservation, NM; combined municipal solid waste and construction and demolition waste facility; meeting, 47678–47679

**Interior Department**
*See* Fish and Wildlife Service
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* Surface Mining Reclamation and Enforcement Office

**International Trade Administration**
**NOTICES**
Antidumping:
Gray portland cement and clinker from—
Mexico, 47626–47632
Welded carbon standard steel pipes and tubes from—
India, 47632–47645

Countervailing duties:
Industrial phosphoric acid from—
Israel, 47645–47649
Pig iron from—
Brazil, 47649–47650
*Applications, hearings, determinations, etc.:*
Research Foundation of City University of New York et al., 47645

**Justice Department**
*See* Antitrust Division
*See* Immigration and Naturalization Service
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Community policing discretionary grants; universal hiring program, 47679–47680
Pollution control; consent judgments:
Bethlehem Steel Corp., 47680

**Land Management Bureau**
**RULES**
Public administrative procedures:
Public land records and policies; CFR subpart removed, 47568–47569
**NOTICES**
Meetings:
Resource advisory councils—
Arizona, 47679

**Management and Budget Office**
**NOTICES**
Cost principles for educational institutions (Circular A-21), 47722–47726

**Mine Safety and Health Federal Review Commission**
*See* Federal Mine Safety and Health Review Commission

**National Aeronautics and Space Administration**
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 47694–47695

**National Institutes of Health**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 47672
Grants and cooperative agreements; availability, etc.:
National Cancer Institute—
New targeted drugs, made partly of entities provided by NCI; development as treatments for cancer patients, 47672–47673
Meetings:
National Cancer Institute, 47673–47674
National Heart, Lung, and Blood Institute, 47674
National Institute of Child Health and Human Development, 47675–47676
National Institute of Mental Health, 47674–47675
National Institute on Alcohol Abuse and Alcoholism, 47676
National Institute on Deafness and Other Communication Disorders, 47676
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Biovector Therapeutics, S.A., 47676–47677

**National Oceanic and Atmospheric Administration**
**RULES**
Fishery conservation and management:
Magnuson Act provisions
Regional fishery management council members appointment, 47584–47587
West Coast States and Western Pacific fisheries—
Precious corals, 47587
**PROPOSED RULES**
Ocean and coastal resource management:
Marine sanctuaries—
Thunder Bay National Marine Sanctuary, MI; designation, 47611–47612
**NOTICES**
Permits:
Marine mammals, 47650

**Nuclear Regulatory Commission**
**PROPOSED RULES**
Production and utilization facilities; domestic licensing:
Nuclear power plants—
Decommissioning; financial assurance requirements, 47588–47606
**NOTICES**
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 47696–47705
*Applications, hearings, determinations, etc.:*
Southern Nuclear Operating Co., Inc., et al., 47695–47696

**Office of Management and Budget**
*See* Management and Budget Office

**Personnel Management Office**
**RULES**
Acquisition regulations:
Health benefits, Federal employees—
Truth in Negotiations Act and related changes, 47569–47583
**NOTICES**
Meetings:
Federal Prevailing Rate Advisory Committee, 47706

**Postal Service**
**RULES**
International Mail Manual:
Global package link service; implementation, 47558–47560

**Public Health Service**
*See* Food and Drug Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration

**Rural Housing Service**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Section 538 rural rental housing guaranteed loan program, 47623–47624

**Rural Utilities Service**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 47624

**Securities and Exchange Commission**
**NOTICES**
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 47711–47712
Chicago Board Options Exchange, Inc., 47712–47715
New York Stock Exchange, Inc., 47715–47718
*Applications, hearings, determinations, etc.:*
Credit Suisse First Boston, Inc., 47706–47709
Style Select Series, Inc., et al., 47709–47711

**Substance Abuse and Mental Health Services Administration**
**NOTICES**
Meetings:
Mental Health Services Center National Advisory Council, 47677

**Surface Mining Reclamation and Enforcement Office**
**PROPOSED RULES**
Abandoned mine land reclamation:
Fund reauthorization; implementation, 47617–47619
Permits and coal exploration systems:
Notification and permit processing; withdrawn, 47617

**Surface Transportation Board**
**RULES**
Practice and procedure:
Rail lines acquisition; advance notice of proposed transactions, 47583–47584

**Technology Administration**
**NOTICES**
Meetings:
Federal Key Management Infrastructure Federal Information Processing Standard Development Technical Advisory Committee, 47650

**Transportation Department**
*See* Federal Railroad Administration
*See* Surface Transportation Board
**PROPOSED RULES**
Computer reservation systems, carrier-owned, 47606–47611
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 47718

**Treasury Department**
*See* Comptroller of the Currency
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 47720
Boycotts, international:
Countries requiring cooperation; list, 47720

---

**Separate Parts In This Issue**

**Part II**
Office of Management and Budget, 47722–47726

**Part III**
Department of the Treasury, Comptroller of the Currency; Federal Deposit Insurance Corporation; Federal Reserve System, 47728–47738

**Part IV**
Department of Housing and Urban Development, 47740–47743

---

**Reader Aids**
Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws 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.

---

**Public Laws Electronic Notification Service**
Free electronic mail notification of newly enacted Public Law is now available. To subscribe, send E-mail to **PENS@GPO.GOV** with the message: *SUBSCRIBE PENS-L FIRSTNAME LASTNAME*

## 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**
301 (2 documents) .....47551, 47553

**10 CFR**
**Proposed Rules:**
50.....47588

**12 CFR**
25.....47728
208.....47728
211.....47728
369.....47728

**14 CFR**
**Proposed Rules:**
255.....47606

**15 CFR**
**Proposed Rules:**
922.....47611

**17 CFR**
**Proposed Rules:**
1.....47612
30.....47612
33.....47612
190.....47612

**24 CFR**
**Proposed Rules:**
968.....47740

**30 CFR**
**Proposed Rules:**
773.....47617
870.....47617

**39 CFR**
20.....47558

**40 CFR**
180 (2 documents) .....47560, 47561
185.....47561
186.....47561
**Proposed Rules:**
300.....47619

**43 CFR**
1810.....47568

**48 CFR**
1602.....47569
1603.....47569
1604.....47569
1615.....47569
1616.....47569
1629.....47569
1631.....47569
1643.....47569
1644.....47569
1645.....47569
1649.....47569
1652.....47569
1653.....47569

**49 CFR**
1121.....47583
1150.....47583

**50 CFR**
600.....47584
660.....47587

# Rules and Regulations

Federal Register
Vol. 62, No. 175
Wednesday, September 10, 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.

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 97–073–2]**

### Oriental Fruit Fly; Designation of Quarantined Area

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Oriental fruit fly regulations by quarantining an additional area in Los Angeles County, CA, and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

**DATES:** This interim rule is effective September 4, 1997. Consideration will be given only to comments received on or before November 10, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97–073–2, 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. 97–073–2. 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. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:**

## Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks and can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, by which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its localities in which the Oriental fruit fly has been found. The regulations also impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

An interim rule effective on August 20, 1997, and published in the **Federal Register** on August 26, 1997 (62 FR 45141–45142, Docket No. 97–073–1), quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) reveal that an additional portion of Los Angeles County, CA, is infested with the Oriental fruit fly. The Oriental fruit fly is not known to exist anywhere else in the continental United States.

Officials of State agencies of California have begun an intensive Oriental fruit fly eradication program in the quarantined area in California. Also, California has taken action to restrict the intrastate movement of certain articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into other States, we are amending the regulations in § 301.93–3 by adding a new area of Los Angeles County, CA, to the list of quarantined areas. The quarantined areas of Los Angeles County, CA, are described in the rule portion of this document. The area quarantined by this interim rule is the second area described.

## Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Oriental fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

## Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the Oriental fruit fly regulations by adding an additional area of Los Angeles County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from the quarantined areas.

Within the quarantined portion of Los Angeles County, there are approximately 301 entities that will be affected by this rule. All would be considered small entities. These include 4 farmers' markets, 69 growers, 1 community garden, 2 distributors, 183 fruit sellers, 41 nurseries, and 1 swap meet. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will 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.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for the Oriental fruit fly regulatory program. The site specific environmental assessment provides a basis for the conclusion that implementation of integrated pest management to achieve eradication of the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Paperwork Reduction Act**

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

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.93–3, paragraph (c), the entry for California is amended by revising the entry for Los Angeles County to read as follows:

**§ 301.93–3 Quarantined areas.**

* * * * *

(c) * * *

CALIFORNIA

*Los Angeles County.* That portion of Los Angeles County beginning at the intersection of Arrow Highway and Interstate Highway 605; then west along Arrow Highway to Buena Vista Street; then north along Buena Vista Street to Huntington Drive; then east along Huntington Drive to Foothill Boulevard; then east along Foothill Boulevard to the shoreline of the San Gabriel River; then northeast along the shoreline of the San Gabriel River to State Highway 39 (San Gabriel Canyon Road); then southeast along an imaginary line to the intersection of Sierra Madre Avenue and Glendora Avenue; then south along Glendora Avenue to Alosta Avenue; then east along Alosta Avenue to Lone Hill Avenue; then south along Lone Hill Avenue to Cypress Street; then west along Cypress Street to Badillo Street; then southwest along Badillo Street to Reeder Avenue; then south along Reeder Avenue to Puente Street; then southeast along Puente Street to Via Verde; then southwest along Via Verde to The Mall; then south along The Mall to Interstate Highway 10; then west along Interstate Highway 10 to Grand Avenue; then southeast along Grand Avenue to Amar Road; then west and northwest along Amar Road to Baldwin Park Boulevard; then northeast along Baldwin Park Boulevard to Francisquito Avenue; then northwest along Francisquito Avenue to Ramona Boulevard; then west along Ramona Boulevard to Interstate Highway 605; then northeast along Interstate Highway 605 to the point of beginning.

Also, that portion of Los Angeles County beginning at the intersection of Interstate Highway 10 and Gateway Boulevard; then east along Interstate Highway 10 to its second intersection with National Boulevard; then east along National Boulevard to Jefferson Boulevard; then east along Jefferson Boulevard to La Cienega Boulevard; then south along La Cienega Boulevard to Rodeo Road; then east along Rodeo Road to Martin Luther King Jr. Boulevard; then southeast along Martin Luther King Jr. Boulevard to Crenshaw Boulevard; then south along Crenshaw Boulevard to Slauson Avenue; then east along Slauson Avenue to Van Ness Avenue; then south along Van Ness Avenue to Rosecrans Avenue; then west along Rosecrans Avenue to Inglewood Avenue; then south along Inglewood Avenue to Manhattan Beach Boulevard; then west along Manhattan Beach Boulevard to the Manhattan Beach Municipal Pier; then west along the Manhattan Beach Municipal Pier to the Pacific Ocean coastline; then northwest along the Pacific Ocean coastline to a point due west of the west end of Ocean Park Boulevard; then east along an imaginary line drawn from that point to the west end of Ocean Park Boulevard; then northeast along Ocean Park Boulevard to Gateway Boulevard; then

northeast along Gateway Boulevard to the point of beginning.

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

**Craig A. Reed,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–23949 Filed 9–9–97; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

**[Docket No. 97–056–5]**

## Mediterranean Fruit Fly; Additions to Quarantined Areas and Treatments

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Mediterranean fruit fly regulations by adding a portion of Sarasota County, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined area in Polk County, FL, due to the detection of Mediterranean fruit fly infestations in those new areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States. We are also amending the regulations to provide for the use of irradiation as a treatment for berries, fruits, nuts, and vegetables that are regulated articles. This action will provide an additional option for qualifying those regulated articles for movement from quarantined areas.

**DATES:** This interim rule is effective September 4, 1997. Consideration will be given only to comments received on or before November 10, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97–056–5, 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. 97–056–5. 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. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10, referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

In an interim rule effective on June 16, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), we added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from that quarantined area, and added eggplant, other than commercially produced eggplant, to the list of regulated articles. In a second interim rule effective on July 3, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), we expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas. In a third interim rule effective on August 7, 1997, and published in the **Federal Register** on August 13, 1997 (62 FR 43269–43272, Docket No. 97–056–4), we further expanded the quarantined area by adding new areas of Hillsborough County, FL, and an area in Orange County, FL, to the list of quarantined areas. In that third interim rule, we also revised the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of Medfly have occurred in an additional area in Polk County and in a portion of Sarasota County, FL.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately 4.5 miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with those criteria and the recent Medfly findings described above, we are quarantining a new area in Polk County, FL, and an area in Sarasota County, FL. Those new areas are included in the description of quarantined areas contained in § 301.78–3 in the rule portion of this document. We have also changed the manner in which the previously quarantined areas in Hillsborough and Polk Counties are described. Those areas had been described in two entries, one for ''Hillsborough County'' and one for ''Hillsborough and Polk Counties.'' The joint ''Hillsborough and Polk Counties'' entry has been eliminated and the quarantined areas that had been described in that entry have been incorporated into the appropriate entry for Hillsborough County or Polk County.

### Irradiation Treatment

We are also amending the Medfly regulations to include irradiation as a treatment for those berries, fruits, nuts, and vegetables that are listed as regulated articles in § 301.78–2(a) of the regulations. Without irradiation, the only treatments made available by the regulations have been vapor heat for bell peppers, fumigation or vapor heat for tomatoes, and fumigation, fumigation

plus refrigeration, or cold treatment for regulated citrus fruit that has been harvested. The addition of irradiation provides a treatment option for use on those commodities as well as all other regulated berries, fruits, nuts, and vegetables grown in a quarantined area.

To accommodate the inclusion of irradiation as an authorized treatment under the Medfly regulations, we are amending § 301.78–10, ''Treatments,'' by redesignating paragraphs (c) and (d) of that section, which pertain to treating premises and soil, respectively, as paragraphs (d) and (e), and adding the irradiation provisions as a new paragraph (c).

The provisions we are adding to the Medfly regulations for the use of irradiation as a treatment are, for all practical purposes, the same as those provided in § 318.13–4f of ''Subpart—Hawaiian Fruits and Vegetables'' (7 CFR 318.13 through 318.13–17), which provides for the use of irradiation as a treatment for carambola, litchi, and papaya grown in Hawaii. The irradiation provisions we have added to the Medfly regulations differ from those of § 318.13–4f in only three substantive respects: (1) The number of commodities and pests for which irradiation is an approved treatment, (2) the prescribed irradiation dose rate, and (3) the location of approved facilities and the conditions governing the interstate movement of treated and untreated commodities. These three differences are discussed below.

With respect to the first difference cited above—the number of commodities and pests for which the Medlfy regulations authorize irradiation as a treatment—the irradiation provisions of the Medlfy regulations expand the number of commodities from the 3 listed in § 318.13–4f (i.e., carambola, litchi, and papaya) to the 54 berries, fruits, nuts, and vegetables listed as regulated articles in § 301.78–2(a). As discussed above, the Medlfy regulations did not provide treatments for commodities other than bell pepper, tomato, and harvested citrus fruit. As noted in APHIS' policy statement regarding the application of irradiation to phytosanitary problems (published in the **Federal Register** on May 15, 1996, 61 FR 24433–24439, Docket No. 95–088–1), the U.S. Department of Agriculture's (USDA's) Agricultural Research Service (ARS) conducted exhaustive research to determine commodity-generic irradiation dose rates that will provide an acceptable level of quarantine security with regard to certain pests. Given that a commodity-generic dose rate has been established for Medfly, we believe that it is appropriate to provide the prescribed irradiation treatment as an option for growers of any of the 54 different berries, fruits, nuts, and vegetables listed as regulated articles who wish to obtain certification for the interstate movement of their commodities on the basis of treatment.

The second difference cited above pertains to the prescribed irradiation dose rate. The commodity-generic dose rate established by ARS for Medfly is 225 Gray (22.5 krad), so we have established 225 Gray as the prescribed dose rate in the Medfly regulations, rather than the 250 Gray (25 krad) prescribed in § 318.13–4f of ''Subpart—Hawaiian Fruits and Vegetables.'' Although Medlfy is among the pests of concern in Hawaii, the focus of the treatments in § 318.13–4f is on what is referred to as the ''Trifly complex,'' which consists of Medfly, Oriental fruit fly (*Bactrocera dorsalis*), and the melon fly (*Bactrocera cucurbitae*). Of the three, the Oriental fruit fly is the species most resistant to irradiation, requiring a dose rate of 250 Gray, so it was necessary for the irradiation protocol prescribed in § 318.13–4f to require that higher dose rate in order to provide quarantine security against all three pests of the Trifly complex. Because the Oriental fruit fly is not a pest of concern in the Medfly regulations, we have set 225 Gray as the prescribed dose rate in § 301.78–10.

The third and final difference cited above pertains to the location of approved facilities and the conditions governing the interstate movement of treated and untreated commodities. Section 318.13–4f of ''Subpart—Hawaiian Fruits and Vegetables'' provides for interstate movement of carambola, litchi, and papaya from Hawaii and the application of irradiation treatment either in Hawaii or, under certain conditions, at approved facilities on the mainland. Those provisions relate to treatment in Hawaii, the movement of treated and untreated fruits and vegetables to the mainland, and restrictions on the mainland States where an approved facility for the treatment of carambola, litchi, and papaya from Hawaii may be located, as well as a prohibition against the movement of litchi into Florida. The regulations pertaining to the location of approved facilities in Hawaii and the mainland, as well as the restrictions on the movement of litchi, are not relevant to the Medlfy regulations and were, therefore, not included. Further, in adding irradiation as a treatment in the Medfly regulations, we did not believe it was necessary to include similar interstate movement conditions in the section describing the treatment (§ 301.78–10) because the Medlfy regulations in § 301.78–4 already address the conditions governing the interstate movement of regulated articles from a quarantined area, including regulated articles that have been treated in accordance with § 301.78–10.

The remaining provisions of § 318.13–4f of ''Subpart—Hawaiian Fruits and Vegetables''—i.e., those provisions regarding approved facilities, treatment monitoring, packaging, dosimetry systems, certification based on treatment, recordkeeping, requests for approval and inspection of facilities, denial and withdrawal of approval, and the USDA's non-responsibility for loss or damage resulting from treatment—have been reproduced in the Medfly regulations and serve the same purpose as in § 318.13–4f.

## Miscellaneous

We have amended the introductory text of § 310.78–10 to remove an outdated reference to the kinds of regulated articles for which treatments are provided in that section. The last sentence of that introductory text, which stated ''The following treatment may be used for bell pepper, tomato, and soil,'' should have been updated previously to reflect the inclusion in the regulations of treatments for regulated citrus fruit that has been harvested and for premises within a quarantined area. To correct that omission, and to reflect the inclusion of the irradiation treatments discussed above, we have changed that final sentence to read ''The following treatments may be used for the regulated articles indicated.''

We have amended § 301.78–1 to add a definition of the term ''core area.'' That term is used in § 301.78–10 with regard to the treatment of premises in a quarantined area, but is not defined. We have defined ''core area'' as ''The 1 square mile area surrounding each property where Mediterranean fruit fly has been detected.'' Except for the specific reference to Medfly, the definition is the same as the definition provided for the same term in our domestic quarantine regulations for Mexican fruit fly (7 CFR 301.64 through 301.64–10) and Oriental fruit fly (7 CFR 301.93 through 301.93–10). We have also made a minor editorial correction in two places in the regulations.

## Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for

public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by adding a portion of Sarasota County, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined area in Polk County, FL, due to the detection of Mediterranean fruit fly infestations in those new areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States. This interim rule also amends the regulations to provide for the use of irradiation as a treatment for berries, fruits, nuts, and vegetables that are regulated articles. This action will provide an additional option for qualifying those regulated articles for movement from quarantined areas.

This interim rule is the fourth in a series of interim rules that have designated certain areas of Florida as quarantined areas for Medfly. The three previous interim rules were published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), and August 13, 1997 (62 FR 43269–43272, Docket No. 97–056–4). In each of those interim rules, we stated that the emergency situation with respect to Medfly made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We further stated that, if we determined that those rules would have a significant economic impact on a substantial number of small entities, we would discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis. For this interim rule, we have prepared a regulatory flexibility analysis that examines the potential economic impacts on small entities of this interim rule, as well as of the three previous interim rules.

We estimate that there are 1,062 entities in the quarantined areas of Hillsborough, Manatee, Polk, Orange, and Sarasota Counties that sell, process, handle, or move regulated articles; that estimate considers 13 transportation terminals, 295 fruit stands, 64 flea markets, 4 processing plants, 64 farmers markets, 189 nurseries (primarily retail), 149 mobile produce vendors, 256 food stores, 2 fruit shippers, 3 commercial growers, 21 garbage service firms, 1 vegetable packinghouse, and 1 hauler/harvester. The number of these entities that meet the U.S. Small Business Administration's (SBA's) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 1,062 entities are small in size, since the overwhelming majority of businesses in central Florida, as well as the rest of the United States, are small entities by SBA standards. As an example, there were 1,099 grocery stores in the Tampa metropolitan area in 1992. The per-store average sales for all 1,099 stores was $2.9 million, well below the SBA's current small entity size standard of $20.0 million for those types of stores. Similarly, the 1992 per-store average sales for all 115 retail nursery and lawn and garden supply stores in the Tampa metropolitan area was $0.5 million, well below the SBA's current small entity size standard of $5.0 million for those types of stores.

Few, if any, of the 1,062 entities will be significantly affected by the quarantine actions taken in the four interim rules because virtually all of those entities do not typically move regulated articles outside the State of Florida during the normal course of their business. Nor do consumers of products purchased from those entities generally move those products interstate. Fruit stands, flea markets, farmers markets, retail nurseries, mobile produce vendors, and food stores comprise, on a combined basis, 1,017 (or about 96 percent) of the 1,062 entities in the quarantined area that sell or handle regulated articles, and the operations of those entities are essentially local in nature. The fruits and vegetables sold by grocery stores and other retail food outlets are generally sold locally for local consumption. Retail nurseries also market their products locally, for local consumption. The interim rules, because they restrict the interstate movement of regulated articles, will have little or no impact on the vast majority of entities in the quarantined area.

The 12 transportation terminals, 4 processing plants, and 2 fruit shippers comprise the remaining 4 percent of the 1,062 entities in the quarantined area who sell or handle regulated articles. The processors will be largely unaffected by the rule change because any regulated articles they might use are typically used to produce fruit juices and fruit parts, products that are not regulated articles and, as a consequence, are not restricted as to their interstate movement. The transportation terminals are comprised primarily of airports and distribution centers such as U.S. Postal Service facilities and package delivery centers. Most of the terminals derive the bulk of their revenues from activities other than the interstate movement of regulated articles, so the impact of the interim rules on them should be minimal. The two fruit shippers have the potential to be significantly affected, since they would be expected to generate at least some of their revenues from the interstate shipment of fruit. The commercial growers, garbage service firms, vegetable packinghouse, and hauler/harvester also have the potential to be significantly affected. However, the effect on those few small entities that do move regulated articles interstate from the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional cost. Also, many of those small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rules should be minimal.

Finally, the addition of noncommercial eggplant to the list of articles regulated for the Medfly should have minimal impact on small entities. This is because small entities are comprised primarily of small businesses, and most small businesses in the regulated area sell or handle only commercially produced eggplant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will 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.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Paperwork Reduction Act**

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

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–1, the defined term *Commercially-produced* is revised to read *Commercially produced*, and a definition of *Core area* is added, in alphabetical order, to read as follows:

**§ 301.78–1 Definitions.**

* * * * *

*Core area.* The 1 square mile area surrounding each property where Mediterranean fruit fly has been detected.

* * * * *

**§ 301.78–2 [Amended]**

3. In § 301.78–2, paragraph (a), the entry ''Eggplant (*Solanum melongena* L.), other than commercially-produced eggplant'' is amended by removing the words ''commercially-produced'' and adding the words ''commercially produced'' in their place.

4. In § 301.78–3, paragraph (c), the entry for Florida is amended by removing the entry for Hillsborough and Polk Counties, and by revising the entry for Hillsborough County and adding entries for Polk County and Sarasota County to read as follows:

**§ 301.78–3 Quarantined areas.**

* * * * *

(c) * * *

FLORIDA

*Hillsborough County.* Beginning at the intersection of the Hillsborough/Polk County line and the section line dividing secs. 25 and 36, T. 27 S., R. 22 E.; then west along the section line dividing secs. 25 and 36, T. 27 S., R. 22 E. to the Hillsborough River; then west along the Hillsborough River to I–75; then north along I–75 to the Hillsborough/Pasco County line; then west along the Hillsborough/Pasco County line to the section line dividing secs. 5 and 6, T. 27 S., R. 18 E.; then south along the section line dividing secs. 5 and 6, T. 27 S., R. 18 E., to Veterans Expressway; then south along Veterans Expressway to Erhlich Road; then west along Erhlich Road to Gunn Highway; then north along Gunn Highway to Mobley Road; then west along Mobley Road to Racetrack Road; then south and west along Racetrack Road to the Hillsborough County line; then south along the Hillsborough County line to I–275; then east along I–275 to the westernmost land mass at the eastern end of the Howard Franklin Bridge; then south, east, and north along the shoreline of Old Tampa Bay, Tampa Bay, and Hillsborough Bay (including the Interbay Peninsula, Davis Island, Harbour Island, Hooker's Point, and Port Sutton) to the shoreline of the Alafia River's extension; then east along the shoreline of the Alafia River's extension to U.S. Highway 301; then south along U.S. Highway 301 to Balm-Riverview Road; then south and east along Balm-Riverview Road to Rhodine Road; then east along Rhodine Road to Boyette Road; then south, east, and north along Boyette Road to Dorman Road; then east along Dorman Road to Browning Road; then north along Browning Road to Lithia-Pinecrest Road; then east along Lithia-Pinecrest Road to Bryant Road; then north along Bryant Road to the Alafia River; then east along the Alafia River to the North Prong Alafia River; then north and west along the North Prong Alafia River to Poley Creek; then east and north along Poley Creek to Hillsborough County line; then north along the county line to the point of beginning.

The following portion of Hillsborough County is also a quarantined area: Beginning at the mouth of Cockroach Creek in Cockroach Bay; then south along the shoreline of the Cockroach Creek to Valroy Road; then east along Valroy Road to I–75; then north along I–75 to the Little Manatee River; then east along the shoreline of the Little Manatee River to the section line dividing secs. 26 and 27, T. 32 S., R. 19 E.; then north along the section line dividing secs. 26 and 27, T. 32 S., R. 19 E., to the section line dividing secs. 22 and 23, T. 32 S., R. 19 E. (also known as SE. 36th Street); then north along the section line dividing secs. 22 and 23, T. 32 S., R. 19 E., (also known as SE. 36th Street)to the section line dividing secs. 14 and 15, T. 32 S., R. 19 E.; then north along the section line dividing secs. 14 and 15, T. 32 S., R. 19 E. to I–75; then north along I–75 to NE. 19th Avenue; then west along NE. 19th Avenue to the section line dividing secs. 34 and 35, T. 31 S., R. 19 E.; then north along the section line dividing secs. 34 and 35, T. 31 S., R. 19 E., through sections 26 and 27, secs. 22 and 23, and secs. 14 and 15, T. 31 S., R. 19 E., to U.S. Highway 41; then

north along U.S. Highway 41 to Big Bend Road (State Road 672); then west along Big Bend Road (State Road 672) to its end; then west along an imaginary line to the shoreline of Tampa Bay; then south and west along the shoreline of Tampa Bay (including all land masses to the east of Tampa Bay) to the shoreline of Cockroach Bay; then south and east along the shoreline of Cockroach Bay to the point of beginning.

* * * * *

*Polk County.* Beginning at the Hillsborough/Polk County line and Poley Creek; then northeast on Poley Creek to State Highway 60; then east along State Highway 60 until it becomes Van Fleet Drive in the city of Bartow; then east along Van Fleet Drive to its intersection with U.S. Highway 17; then north along U.S. Highway 17 to the section line dividing secs. 27 and 28 of T. 29 S., R. 25 E.; then north along the section line dividing secs. 27 and 28 of T. 29 S., R. 25 E. to Thornhill Road; then north along Thornhill Road to State Highway 540; then west along State Highway 540 to the section line dividing secs. 31 and 32 of T. 28 S., R. 25 E; then north on the section line dividing secs. 31 and 32 of T. 28 S., R. 25 E., to the section line dividing secs. 30 and 31 of T. 27 S., R. 25 E.; then west along the section line dividing secs. 30 and 31 of T. 27 S., R. 25 E., to the intersection of I–4 and Highway 582; then southwest along I–4 to the section line dividing secs. 9 and 16, T. 28 S., R. 23 E. (corner of Swindell Road and Sutton Road); then west along the section line dividing secs. 9 and 16, T. 28 S., R. 23 E., to the Hillsborough/Polk County line (County Line Road); then south along the county line to the point of beginning.

* * * * *

*Sarasota County.* Beginning at the water's edge of Sarasota Bay and Virginia Drive; then west on Virginia Drive to U.S. Highway 41 (Tamiami Trail); then east across U.S. 41 on Martin Luther King Drive and 27th Street (Highway 683) to Lockwood Ridge Road; then south along Lockwood Ridge Road to 17th Street; then east along 17th Street to Honore Avenue; then south along Honore Avenue to State Highway 780 (Fruitville Road); then east along State Highway 780 to I–75; then south along I–75 to State Highway 72 (Clark Road); then west along State Highway 72 to State Highway 773 (Beneva Road); then south along State Highway 773 to U.S. Highway 41 (Tamiami Trail); then south across U.S. Highway 41 along Vamo Road to Livingstone Street; then west along Livingstone Street to the water's edge of Little Sarasota Bay; then north along the shoreline to the point of beginning. In addition, all islands and keys of Sarasota County from New Pass south to the point where Turtle Beach Drive meets Midnight Pass Road are part of the area regulated for Medfly in Sarasota County.

5. In § 301.78–10, in the introductory text of the section, the last sentence is amended by removing the words ''treatment may be used for bell pepper, tomato, and soil'' and by adding in their place the words ''treatments may be used for the regulated articles indicated''.

6. In § 301.78–10, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively, and a new paragraph (c) is added to read as follows:

**§ 301.78–10 Treatments.**

* * * * *

(c) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this paragraph, is approved as a treatment for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.78–2(a) of this subpart.

(1) *Approved facility.* The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must:

(i) Be capable of administering a minimum absorbed ionizing radiation dose of 225 Gray (22.5 krad) to the fruits and vegetables;[8]

(ii) Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, except that fruits and vegetables traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons;

(iii) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 301.78–6 of this subpart; and

(iv) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

(2) *Treatment monitoring.* Treatment must be carried out under the monitoring of an inspector. This monitoring must include inspection of treatment records and unannounced inspection visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.[9]

(3) *Packaging.* Fruits and vegetables that are treated within a quarantined area must be packaged in the following manner:

(i) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.[10]

(ii) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(A) With polyethylene sheet wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(4) *Dosage.* The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 225 Gray (22.5 krad).[11]

(5) *Dosimetry systems.* (i) Dosimetry must demonstrate that the absorbed dose, including areas of minimum and maximum dose, is mapped, controlled, and recorded.

(ii) Absorbed dose must be measured using a dosimeter that can accurately measure an absorbed dose of 225 Gray (22.5 krad).

(iii) The number and placement of dosimeters used must be in accordance with American Society for Testing and Materials (ASTM) standards.[12]

[8] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

[9] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

[10] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Phytosanitary Issues Management Team, 4700 River Road Unit 140, Riverdale, Maryland 20737–1236.

[11] See footnote 8.

[12] Designation E 1261, ''Standard Guide for Selection and Calibration of Dosimetry Systems for

Continued

(6) *Records.* Records or invoices for each treated lot must be made available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). An irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(7) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (c)(1) of this section.

(8) *Denial and withdrawal of approval.* (i) The Administrator will withdraw the approval of any irradiation treatment facility when the irradiation processor requests in writing the withdrawal of approval.

(ii) The Administrator will deny or withdraw approval of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(9) *Department not responsible for damage.* This treatment is approved to assure quarantine security against Mediterranean fruit fly. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

* * * * *

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

**Craig A. Reed,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–23948 Filed 9–9–97; 8:45 am]

BILLING CODE 3410–34–P

Radiation Processing,'' American Society for Testing and Materials, Annual Book of ASTM Standards.

## POSTAL SERVICE

## 39 CFR Part 20

## Implementation of Global Package Link Service

**AGENCY:** Postal Service.

**ACTION:** Interim rules with request for comments.

**SUMMARY:** Global Package Link is an international mail service designed for companies sending merchandise to other countries. To implement an agreement previously entered into with the postal administration of France, that country is now being added as a destination country. This action is consistent with the Postal Service's original plan to add destination countries as customer needs dictate (59 FR 65961; December 22, 1994). Global Package Link Service has previously been made available to Brazil, Canada, Chile, China, Germany, Japan, Mexico, Singapore, and the United Kingdom. To use Global Package Link (GPL) service, a customer must mail at least 10,000 GPL packages a year and agree to link its information systems with those of the Postal Service, so that the Postal Service can extract certain information about the contents of the customer's packages for customs clearance and other purposes. Initially, the Postal Service will offer one Standard delivery option in France. A second, Premium Service, is under development and will be available in the next year. Interim regulations have been developed, and are set forth below for comment and suggested revision prior to adoption in final form.

**DATES:** The interim regulations take effect September 10, 1997. Comments must be received on or before October 10, 1997.

**ADDRESSES:** Written comments should be mailed or delivered to Global Package Link Service, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 370 IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying at the above address between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Robert Michelson at the above address. Telephone: (202) 268–5731.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

One of the most important goals of the Postal Service's international mission is the development of services that enhance the ability of U.S. companies to do business in other countries. This responsibility was delineated in 39 U.S.C. 403(b)(2), which makes it the obligation of the Postal Service ''to provide types of mail service to meet the needs of different categories of mail and mail users.'' Global Package Link is designed to more closely meet the needs of customers who send merchandise packages from the United States to multiple international addresses by simplifying the process companies use to prepare their packages for mailing and by reducing the costs those companies incur in mailing merchandise to other countries. Global Package Link makes it easier and more economical for businesses in the United States to export their products to international markets.

In late 1994, with implementation of International Package Consignment Service, later renamed Global Package Link, to Japan (59 FR 65961; December 22, 1994), the Postal Service announced that, when feasible, it would expand the service to other destination countries based on customer requests. The Postal Service later expanded GPL by adding Canada, the United Kingdom, Brazil, Chile, China, Germany, Mexico, and

Singapore as destination countries for qualifying customers (61 FR 13765, March 28, 1996; 62 FR 17072, April 9, 1997; 62 FR 25515, May 9, 1997; 62 FR 45160, August 26, 1997), and is hereby further expanding GPL by adding France as a destination country for qualifying customers. This action implements an agreement previously entered into with the postal administration of France on June 30, 1997, and is described below.

## II. GPL to France

### *A. Qualifying Criteria*

A customer who wants to use GPL to France will be required to enter into a service agreement with the Postal Service agreeing to meet each of the requirements for using GPL service. First, the customer must mail at least 10,000 GPL packages a year. (Volumes to all GPL countries may be counted toward this minimum. See part IV below.) Second, the customer must designate the Postal Service as its carrier of choice to each country for which it uses GPL service. Third, the customer must link its information systems with the Postal Service's so that the Postal Service and the customer can exchange data transmissions concerning the customer's packages, and the Postal Service can extract, on an as-needed basis, certain information about the package by scanning the customer-provided barcode on each package.

In general, the information that must be made available to the Postal Service includes: The order number; the package identification number; the buyer's name and address; the recipient's name and address; the total weight of the package; the total value of the package contents; the number of items in the package; and, for each item in the package, its SKU number, its value, postage and handling charge, and its country of origin. In practice, this requirement means that the customer will have to begin the necessary systems work by the time it begins using GPL, and then will have to assist the Postal Service in completing and maintaining the information systems linkages. The Postal Service will use the extracted information to prepare the necessary customs forms and package labels and to provide user-friendly tracking and tracing.

Arrangements between the Postal Service and the customer that are technical in nature also may appear in the GPL service agreement. For instance, the service agreement may describe the electronic data interface (EDI) or proprietary file format that will be used to transmit data between the customer and the Postal Service, as well as the frequency and schedule of transmissions. Similarly, the service agreement may describe the formats and frequencies for any exception and performance reports that the Postal Service will provide to the customer.

### *B. Customs Forms*

Normally, all necessary Customs forms will be automatically generated by the Postal Service computer workstations. Packages mailed to France through a GPL facility will not be required to bear Customs forms when they are tendered to the Postal Service. The Postal Service will verify, accept, and transport these packages to a designated GPL processing facility. After scanning the customer-printed barcode on each package and correlating it with the package-specific information transmitted by the customer, the Postal Service will print the necessary Customs forms and then affix them to the customer's packages as part of the processing operation at the GPL Processing Facility.

### *C. Customs Clearance*

The Postal Service has developed the Customs Pre-Advisory System (CPAS) as part of GPL processing. This electronic system collects package-specific data to satisfy Customs requirements as packages are processed using the USPS computer workstations located at a GPL facility. The system electronically advises the USPS delivery agent and Customs of the contents of each package mailed. Since this advisory information arrives before the mail, CPAS facilitates and simplifies Customs clearance. To use CPAS, recipients of merchandise must designate the Postal Service and its Customs broker as their agents for Customs clearance.

### *D. Delivery Options*

The Postal Service will initially offer one delivery option in France. This Standard Service will include home delivery throughout France within two to three days after clearing Customs.

Premium Service is under development and will be available in the next year. It will include track and trace for individual packages and delivery throughout France within one to two days after clearing Customs.

### *E. Rates*

The base rates for GPL service to France are set forth below. The Postal Service will charge the base rates, in one pound increments, for the first 100,000 packages mailed by a customer in a 12-month period. Once the customer has mailed 100,000 packages to a country, postage for the rest of the customer's packages to that country in the remainder of that 12-month period will be reduced by 3% from the base rates.

## III. Minimum Volumes

Minimum volumes to all GPL countries are set at a uniform level of 10,000 packages during a 12-month time period. Volumes to all GPL destination countries will be applied toward fulfillment of this minimum.

## IV. Conclusion

Accordingly, the Postal Service hereby adopts the following interim regulations for GPL service to France. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning this interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

## List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

## PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Effective September 10, 1997, subchapter 620 of the International Mail Manual, Issue 18, is amended as follows:

**6 Special Programs**

* * * * *

*620 Global Package Link*

* * * * *

*621.3 Availability*

Global Package Link service is available only to Brazil, Canada, Chile, China (People's Republic of), France, Germany, Japan, Mexico, Singapore, and the United Kingdom.

* * * * *

*623 General*

* * * * *

*623.2 Customs Documentation*

Customs documentation will be produced by the Postal Service from data transmitted by the mailer.

*623.3 Size and Weight Limits*

The weight limits for Global Package Link service are 70 pounds for Chile, China, and Germany; 66 pounds for Brazil, Canada, France, Singapore, and the United Kingdom; 64 pounds for Mexico; and 44 pounds for Japan.

The maximum length of GPL packages is 60 inches and the maximum length and girth combined is 108 inches with exceptions: Maximum size for Germany is length 47 inches, height 23 inches, width 23 inches; maximum size for China for any one dimension is 59 inches; the sum of the length and the greatest circumference measured in a direction other than the length shall not exceed 118 inches; Japan Standard packages weighing less than 1 pound, the maximum length is 24 inches with a height and depth and length combined maximum of 36 inches. All packages must be large enough to accommodate the necessary labels and customs forms on the address side.

* * * * *

*626 Services Available*

* * * * *

*626.11 Premium Service*

Premium service is available to all countries (Air Courier for Canada) except France. Packages sent through premium service are transported to the destination country by air where they receive special handling and expedited delivery. The mailer can track premium service packages through delivery. Reports of delivery performance are furnished to the mailer in the formats and at the frequencies agreed upon by the Postal Service and the mailer.

*626.12 Standard Service*

Standard service is available to Japan, Canada (Ground Courier for Canada), France, Mexico, Singapore, and the United Kingdom. Packages sent through standard service are transported to the destination country by air (or a combination of air/ground to Canada) for delivery. The mailer can track standard service packages through dispatch from the Global Package Link processing facility for Japan and France and through delivery for Canada and the United Kingdom. In Mexico, Standard Service provides for customer pickup of parcels at selected, secured, customer service centers with tracking to pickup.

* * * * *

3. Effective September 10, 1997, the Individual Country Listing for France in the International Mail Manual, Issue 18, is amended by adding the following information, concerning Global Package Link, to the end of the listing.

**France**

*Global Package Link*

| Weight not over (pounds) | Price per piece standard service | |
|---|---|---|
| | <100,000 pieces | >100,000 pieces |
| 1 | $6.75 | $6.55 |
| 2 | 8.75 | 8.49 |
| 3 | 10.75 | 10.43 |
| 4 | 12.75 | 12.37 |
| 5 | 14.75 | 14.31 |
| 6 | 16.75 | 16.25 |
| 7 | 18.75 | 18.19 |
| 8 | 20.75 | 20.13 |
| 9 | 22.75 | 22.07 |
| 10 | 24.75 | 24.01 |
| 11 | 26.75 | 25.95 |
| 12 | 28.75 | 27.89 |
| 13 | 30.75 | 29.83 |
| 14 | 32.75 | 31.77 |
| 15 | 34.75 | 33.71 |
| 16 | 36.75 | 35.65 |
| 17 | 38.75 | 37.59 |
| 18 | 40.75 | 39.53 |
| 19 | 42.75 | 41.47 |
| 20 | 44.75 | 43.41 |
| 21 | 46.75 | 45.35 |
| 22 | 48.75 | 47.29 |
| 23 | 50.75 | 49.23 |
| 24 | 52.75 | 51.17 |
| 25 | 54.75 | 53.11 |
| 26 | 56.75 | 55.05 |
| 27 | 58.75 | 56.99 |
| 28 | 60.75 | 58.93 |
| 29 | 62.75 | 60.87 |
| 30 | 64.75 | 62.81 |
| 31 | 66.75 | 64.75 |
| 32 | 68.75 | 66.69 |
| 33 | 70.75 | 68.63 |
| 34 | 72.75 | 70.57 |
| 35 | 74.75 | 72.51 |
| 36 | 76.75 | 74.45 |
| 37 | 78.75 | 76.39 |
| 38 | 80.75 | 78.33 |
| 39 | 82.75 | 80.27 |
| 40 | 84.75 | 82.21 |
| 41 | 86.75 | 84.15 |
| 42 | 88.75 | 86.09 |
| 43 | 90.75 | 88.03 |
| 44 | 92.75 | 89.97 |
| 45 | 94.75 | 91.91 |
| 46 | 96.75 | 93.85 |
| 47 | 98.75 | 95.79 |
| 48 | 100.75 | 97.73 |
| 49 | 102.75 | 99.67 |
| 50 | 104.75 | 101.61 |
| 51 | 106.75 | 103.55 |
| 52 | 108.75 | 105.49 |
| 53 | 110.75 | 107.43 |
| 54 | 112.75 | 109.37 |
| 55 | 114.75 | 111.31 |

*Discounts*

Postage is reduced by the following discounts once the applicable volume thresholds are reached during a 12-month period:

| Number of packages mailed | Discount |
|---|---|
| Over 100,000 | 3% |

* * * * *

**Stanley F. Mires,**

*Chief Counsel Legislative.*

[FR Doc. 97–23836 Filed 9–9–97; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300513A; FRL–5742–4]**

**RIN 2070–AB78**

## Dimethomorph; Pesticide Tolerances for Emergency Exemptions; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** EPA issued a document (FR Doc. 97–19672) establishing time-limited tolerances for combined residues of the pesticide dimethomorph in or on tomatoes, tomato puree, and tomato paste. Section 180.493(b) was incorrectly revised. This document corrects § 180.493(b).

**DATES:** This correction is effective July 25, 1997.

**FOR FURTHER INFORMATION CONTACT:** By mail: Libby Pemberton, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9364, e-mail: pemberton.libby@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a document (FR Doc. 97–19672), July 25, 1997 (62 FR 39956) (FRL–5730–3), incorrectly revising paragraph (b) of § 180.493. This document correctly states the amendatory language.

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 27, 1997.

**James Jones,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

In FR Doc. 97–19672 published on July 25, 1997 (62 FR 39961), make the following corrections:

**§ 180.493 [Corrected]**

1. On page 39961, amendatory instruction 2 is corrected to read as follows:

''2. Section 180.493 is amended in paragraph (b) by revising the introductory text and alphabetically adding the following tolerances to the table to read as follows:.''

2. Correct the table by adding in paragraph (b) five stars at the beginning of the table.

[FR Doc. 97–23974 Filed 9-9-97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 180, 185 and 186

**[OPP–300549; FRL–5743–6]**

**RIN 2070–AB78**

## Triadimefon; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for residues of triadimefon in or on asparagus and in or on artichokes. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on asparagus and artichokes. This regulation establishes maximum permissible levels for residues of triadimefon in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on September 1, 1999.

**DATES:** This regulation is effective September 10, 1997. Objections and requests for hearings must be received by EPA on or before November 10, 1997.

**ADDRESSES:** Written objections and hearing requests, identified by the docket control number, [OPP–300549], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300549], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300549]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** By mail: Olga Odiott, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9363, e-mail: odiott.olga@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the fungicide triadimefon, in or on asparagus at 0.15 part per million (ppm), and in or on artichokes at 0.6 ppm. These tolerances will expire and are revoked on September 1, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

### I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

## II. Emergency Exemption for Triadimefon on Asparagus and Artichokes and FFDCA Tolerances

The state of Michigan availed itself of the authority to declare a crisis exemption to use triadimefon to control the asparagus rust (*Puccinia asparagi*). EBDC fungicides are available and are effective against the asparagus rust but processors in Michigan will not accept asparagus treated with EBDCs, leaving the Michigan growers with no alternative for control of the disease. Yield declines of 20 to 50% are possible without the use of triadimefon.

The state of California stated that powdery mildew, caused by the fungus *Leveillula taurica* Lev., is a relatively new disease of artichokes that was first detected by growers in California during the summer of 1985. It is now endemic in most artichoke growing districts, affecting more than 65% of the artichoke acreage. Currently, there are no registered fungicides or alternative practices available that will control powdery mildew on artichokes. If triadimefon is not available for use, yield losses of 30 to 50% are expected. EPA has authorized under FIFRA section 18 the use of triadimefon on asparagus and artichokes for control of rust in Michigan and powdery mildew in California. After having reviewed their submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of triadimefon in or on asparagus and in or on artichokes. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on September 1, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on asparagus and in or on artichokes after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether triadimefon meets EPA's registration requirements for use on asparagus and artichokes or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serves as a basis for registration of triadimefon by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Michigan and California to use this pesticide on these crops under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for triadimefon, contact the Agency's Registration Division at the address provided above.

## III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

### *A. Toxicity*

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute'', ''short-term'', ''intermediate term'', and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

*B. Aggregate Exposure*

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants < 1 year old) was not regionally based.

## IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of triadimefon and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerances for residues of triadimefon in or on asparagus at 0.15 ppm and in or on artichokes at 0.6 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by triadimefon are discussed below. Triadimenol is a metabolite of triadimefon and is also an active ingredient in pesticide products (ex. Baytan). Toxicological endpoints for triadimefon and triadimenol are presented below.

1. *Acute toxicity*. The NOEL of 20 mg/kg/day from a rabbit developmental study was selected for assessing acute dietary risk from residues of triadimefon. The risk assessment will evaluate acute dietary risks for females 13+ years old.

The Agency has determined that an acute dietary risk assessment is not required for triadimenol. This decision was based on the lack of developmental effects at a maternally toxic dose of triadimenol in a rabbit developmental study.

2. *Short - and intermediate - term toxicity*. The Agency determined that the NOEL of 20 mg/kg/day from the developmental toxicity study in rabbits should be used to assess risks from short and intermediate-term exposures to residues of triadimefon.

The Agency determined that the NOEL of 250 mg/kg/day (highest dose tested) from a 21–day dermal toxicity study in rabbits should be used to assess risks from short- and intermediate-term exposures to residues of triadimenol.

3. *Chronic toxicity*. EPA has established the RfD for triadimefon at 0.04 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 2–year dog feeding study. The NOEL for systemic toxicity in dogs of either sex was 11.4 mg/kg/day and the LOEL was 33.7 mg/kg/day based on decreased food intake, depression in weight gain, and significantly ($p < 0.05$) increased alkaline phosphatase activity in both sexes. An uncertainty factor (UF) of 300 was applied to account for inter-species extrapolation (10), intra-species variability (10) and the lack of an adequate reproductive toxicity study in rats (3).

The RfD for triadimenol was established at 0.038 mg/kg/day. This RfD is based on 2–year and 6–month

feeding studies in dogs with a NOEL of 3.75 mg/kg/day and an uncertainty factor of 100 based on changes in enzyme levels at the LOEL of 15.0 mg/kg/day.

4. *Carcinogenicity*. The Agency's Carcinogenicity Peer Review Committee (CPRC) has classified triadimefon as a Group C (possible human carcinogen) chemical without a $Q_1$* and recommended using the RfD approach to assess dietary cancer risk. The classification was based on an increase in thyroid adenomas in male rats and an increase in hepatocellular adenomas, with a positive dose-related trend, in both male and female mice.

The CPRC classified triadimenol as a Group C (possible human carcinogen) chemical based on liver tumors in female mice. The Committee recommended using the RfD approach to assess dietary cancer risk.

*B. Exposures and Risks*

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.410) for the combined residues of triadimefon and its metabolites containing chlorophenoxy and triazole moieties (expressed as triadimefon), in or on a variety of raw agricultural commodities ranging from 0.04 ppm in poultry meat to 145 ppm in grass seed cleanings.

Tolerances have been established (40 CFR 180.450(a)) for the combined residues of the fungicide triadimenol (KWG-0519,β-(4-chlorophenoxy)-α-(1,1-dimethylethyl)-1*H*-1,2,4-triazol-1-ethanol) and its butanediol metabolite (KWG-1342; 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-1-yl)-1,3-butanediol), calculated as triadimenol, in or on various commodities including barley, oats and wheat grain at 0.05 ppm; barley, oats and wheat forage at 2.5 ppm; and barley, oats and wheat straw at 0.1 ppm. Tolerances have been established (40 CFR 180.450(b)) for the combined residues of triadimenol and its metabolites containing the chlorophenoxy moiety (calculated as triadimenol) in or on the fat, meat, and meat by-products of cattle, goats, hogs, horses and sheep at 0.1 ppm; milk at 0.01 ppm; the fat, meat, and meat by-products of poultry at 0.01 ppm; and eggs at 0.01 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from triadimefon and triadimenol as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The acute dietary (food only) risk assessment for triadimefon used tolerance level residues and assumed 100% crop treated. For the population subgroup of concern, females 13+ years old, the resulting high-end exposure estimate of 0.05 mg/kg/day results in a dietary (food only) MOE of 400. This MOE should be viewed as a conservative risk estimate. Refinement of the risk assessment using anticipated residue values and percent crop-treated data would result in a lower acute dietary exposure estimate.

Acute dietary endpoints were not identified for triadimenol, so this risk assessment was not conducted.

ii. *Chronic exposure and risk.* The chronic dietary risk assessment for triadimefon assumed that 100% of asparagus and artichokes and all other commodities having established and pending triadimefon tolerances will contain triadimefon residues and those residues will be at tolerance level, which result in an overestimate of human dietary exposure. The existing triadimefon tolerances (published, pending, and including the necessary Section 18 tolerances) result in a TMRC that is equivalent to percentages of the RfD that range from 18% for the U.S. population to 75% for non-nursing infants < 1 year old.

The chronic dietary risk assessment for triadimenol assumed that all commodities having established and pending triadimenol tolerances will contain triadimenol residues and those residues will be at the level of the tolerance, which result in an overestimate of human dietary exposure. Thus, in making a safety determination for triadimenol, EPA is taking into account this conservative exposure assessment. The existing triadimenol tolerances (published and pending) result in a TMRC that is equivalent to percentages of the RfD that range from 1% for the U.S. population to 3% for non-nursing infants < 1 year old.

2. *From drinking water.* Based on available data used in EPA's assessment of environmental risk, triadimefon and triadimenol are mobile and have the potential to leach into ground water. There are no established Maximum Contaminant Levels for residues of triadimefon or triadimenol in drinking water, and no Health Advisory levels for triadimefon or triadimenol in drinking water have been established. According to the ''Pesticides in Groundwater Database'', EPA 734–12–92–001, Sept 1992, 14 wells in California were sampled for triadimefon from 1984–1989. No wells had detectable residues. There was no entry for triadimenol.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause triadimefon and triadimenol to exceed the RfD if the tolerances being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with triadimefon and triadimenol in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerances are granted.

3. *From non-dietary exposure.* Triadimefon is currently registered for use on non-food sites such as ornamentals and turfgrass. Triadimenol is currently registered for use on turfgrass. Based on the nature of the outdoor residential uses, the EPA concludes that chronic residential exposure scenarios do not exist for triadimefon. Short and/or intermediate term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including triadimefon.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of

toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Triadimefon and triadimenol are members of the triazole class of pesticides. Other members of this class include tebuconazole, propiconazole, cyproconazole, penconazole, myclobutanil, and difenoconazole. At this time, the Agency has not made a determination that triadimefon and other substances that may have a common mode of toxicity would have cumulative effects, with the exception of triadimenol. A regulated metabolite of triadimefon, triadimenol is itself a fungicide active ingredient registered for use on several crops. In plants, the residue of concern for triadimenol is triadimenol and its butanediol metabolite. In animal commodities, the residue of concern for triadimenol is triadimenol and its metabolites containing the chlorophenoxy moiety.

To estimate the cumulative (triadimefon + triadimenol) aggregate dietary exposures, estimates for triadimenol on its regulated commodities were added to estimates for triadimefon.

*C. Aggregate Risks and Determination of Safety for U.S. Population*

1. *Acute risk.* For the population subgroup of concern, females 13+ years, the calculated MOE value for triadimefon dietary (food) exposure is 400. Although there is potential for exposure to triadimefon in drinking water, the Agency does not expect the aggregate exposure (food plus water) to exceed the Agency's level of concern.

No acute toxicity endpoints were identified for triadimenol, therefore an acute aggregate risk assessment was not conducted.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to triadimefon and triadimenol from food will utilize 19% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants < 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to triadimefon and triadimenol in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to triadimefon and triadimenol residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Based on the registered uses of fenarimol short and/or intermediate term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including triadimefon.

*D. Aggregate Cancer Risk for U.S. Population*

The Agency's CPRC recommended the RfD approach for assessment of dietary cancer risk. Dietary risk concerns due to long-term exposures to triadimefon and triadimenol residues are adequately addressed by the aggregate chronic dietary risk assessment.

*E. Aggregate Risks and Determination of Safety for Infants and Children*

1. *Safety factor for infants and children.* i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of triadimefon and triadimenol, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (for combined inter- and intra-species variability) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies*— a. *Rats.* For triadimefon, the maternal systemic NOEL was 30 mg/kg/day and the LOEL was 90 mg/kg/day. Effects seen at the LOEL include statistically significant body weight gain decrement during gestational days 6–15. The developmental NOEL was 30 mg/kg/day and the developmental LOEL was 90 mg/kg/day, based on the increased incidence of skeletal variations, unossified and incompletely ossified hyoid, and full and rudimentary ribs.

For triadimenol, the maternal (systemic) NOEL was 25 mg/kg/day, based on decreased body weight and food consumption at the LOEL of 125 mg/kg/day. The developmental (fetal) NOEL was 125 mg/kg/day (highest dose tested (HDT)).

b. *Rabbits.* For triadimefon, the maternal (systemic) NOEL was 50 mg/kg/day and the LOEL was 120 mg/kg/day. The maternal LOEL was based on increased clinical signs such as increased hyperactivity, reddish discharge, and decreased body weight gain during gestational days 6–10. The developmental NOEL was 20 mg/kg/day and the LOEL was 50 mg/kg/day, based on irregular spinous process and incomplete ossification of various bones.

For triadimenol, the maternal (systemic) NOEL was 8 mg/kg/day, based on decreased body weight and food consumption at the LOEL of 40 mg/kg/day. The developmental (fetal) NOEL was 40 mg/kg/day, based on post-implantation loss, decreased fetal body weight, and skeletal anomalies at the LOEL of 200 mg/kg/day.

iii. *Reproductive toxicity study.* An acceptable reproductive toxicity study is not available for triadimefon.

For triadimenol, the maternal (systemic) NOEL from a 2-generation reproductive toxicity study in rats was 5.0 mg/kg/day. The NOEL was based on decreased body weight at the LOEL of 25 mg/kg/day. The developmental (pup) NOEL was 5.0 mg/kg/day, based on decreased body weight at the LOEL of 25 mg/kg/day. The reproductive NOEL was 25 mg/kg/day (HDT).

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for triadimefon is not complete with respect to current data requirements. However, in calculating the RfD, an uncertainty factor (UF) of 300 was applied to account for inter-species extrapolation (10), intra-species variability (10), and the lack of an adequate reproductive toxicity study in rats (3). The Agency notes that there is approximately a two-fold difference between the developmental NOEL of 20 mg/kg/day from the rabbit developmental toxicity study and the NOEL of 11.4 mg/kg/day from the 2-year dog feeding study which was the basis of the RfD. It is further noted that in the rabbit developmental toxicity study, the developmental NOEL of 20 mg/kg/day (on which the MOE calculations for acute dietary risks are based) is lower than the maternal systemic NOEL of 50 mg/kg/day from the same rabbit developmental study. The Agency believes that the additional 3X uncertainty factor, together with the very conservative assumptions made for the exposure assessment, provide adequate protection to infants and children from the risks associated with exposures to triadimefon residues.

The toxicological data base for evaluating pre- and post-natal toxicity for triadimenol is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study. The rat developmental study had no developmental effects up to the highest dose tested, which produced maternal toxicity. The rabbit developmental toxicity study demonstrated maternal toxicity at a dose at which no developmental toxicity was apparent. In the rat reproductive toxicity study, the parental and pup effects occur at the NOELs and LOELs and the same effect (decreased body weight) occurred in both pups and parental animals.

v. *Conclusion.* Based on the above considerations and in EPA's best scientific judgment, the application of a margin of exposure/uncertainty factor of 300 provides adequate protection for infants and children from the risks associated with exposures to triadimefon residues.

The EPA also concludes that, for triadimenol, reliable data support use of the standard 100-fold margin of exposure/ uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

2. *Acute risk.* For triadimefon, the acute dietary (food only) MOE was calculated to be 400 for females 13+ years old (accounts for both maternal and fetal exposure), the population subgroup of concern. This risk assessment for triadimefon used tolerance level residues and assumed 100% crop treated. This MOE should be viewed as a conservative risk estimate; further refinement using anticipated residue values and percent crop-treated data would result in a lower acute dietary exposure estimate. The large acute dietary MOE calculated for females 13+ years provides assurance that there is a reasonable certainty of no harm for both females 13+ years and the pre-natal development of infants. Despite the potential for exposure to triadimefon in drinking water, the Agency does not expect the aggregate exposure (food + water) to exceed the Agency's level of concern for acute dietary exposure.

No acute toxicity endpoints were identified for triadimenol, so an acute aggregate risk assesment was not conducted.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to triadimefon and triadimenol from food will utilize percentages of the RfD that range from 28% for children 7–12 years old, up to 78% for non-nursing infants less than 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to triadimefon and triadimenol in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to triadimefon and triadimenol residues.

4. *Short- or intermediate-term risk.* Based on the registered uses of fenarimol short and/or intermediate term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides.

## V. Other Considerations

### *A. Metabolism In Plants and Animals*

The nature of triadimefon residues in plants is adequately understood. The Agency's Metabolism Committee determined that the residues of concern are triadimefon and its metabolites containing chlorophenoxy and triazole moieties, expressed as triadimefon. The nature of triadimefon residues in animals is not germane to these tolerances as no livestock feed items are involved.

### *B. Analytical Enforcement Methodology*

Adequate enforcement methods (GC/MS) are published in the Pesticide Analytical Manual, Volume II, Pesticide Reg. Sec. 180.410, as Methods I and II. In addition, Mobay Method No. 80488 has undergone a successful method trial and has been validated for determination of triadimefon and its metabolites relevant to 40 CFR 180.410 on plant commodities.

### *C. Magnitude of Residues*

Regulable residues of triadimefon are not expected to exceed 0.15 ppm in/on asparagus and 0.6 ppm in/on globe artichokes as a result of these section 18 uses. Secondary residues are not expected in animal commodities as no feed items are associated with these section 18 uses.

### *D. International Residue Limits*

There are no CODEX, Canadian, or Mexican maximum residue limits (MRLs) established for residues of

triadimefon in/on asparagus or in/on artichokes.

## VI. Conclusion

Therefore, time-limited tolerances are established for the regulable residues of triadimefon in asparagus at 0.15 ppm and in artichokes at 0.6 ppm. In addition, because the FQPA eliminated the distinctions between processed food, feed and raw agricultural commodities, OPP is transferring the tolerances for residues of triadimefon in §§ 185.800 and 186.800 to the table in paragraph (a) of § 180.410 and removing the remainder of §§ 185.800 and 186.800.

## VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 10, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

## VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300549] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

## IX. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408(d l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## X. Submission to Congress and the General Accounting Office

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

**List of Subjects**

*40 CFR Part 180*

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

*40 CFR Part 185*

Environmental protection, Food additives, Pesticides and pests.

*40 CFR Part 186*

Environmental protection, Animal feeds, Pesticides and pests.

Dated: August 29, 1997.

**James Jones,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

b. By amending § 180.410 as follows:

i. By revising the section heading.

ii. By adding a subject heading to paragraph (a).

iii. By revising paragraphs (b) and (c).

iv. By adding and reserving paragraph (d) with a subject heading.

**§ 180.410 Triadimefon; tolerances for residues.**

(a) *General* . * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the fungicide triadimefon, 1-(4-chlorophenoxy)-3,3-dimethyl-1(1*H*-1,2,4-triazol-1-yl)-2-butanone and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in connection with use of the pesticide under the section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table:

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Artichokes | 0.6 | September 1, 1999 |
| Asparagus | 0.15 | September 1, 1999 |
| Chili peppers | 0.5 | November 8, 1997 |

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for the combined residues of the fungicide 1-(4-chlorophenoxy)-3,3-dimethyl-1(1*H*-1,2,4-triazol-l-yl)-2-butanone and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Raspberries | 2.0 |

(d) *Indirect or inadvertent residues.* [Reserved]

## PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 348.

**§ 185.800 [Removed]**

b. In § 185.800 by transferring the entries in the table and alphabetically adding them to the table in paragraph (a) of § 180.410, and by removing the remainder of § 185.800.

## PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 342, 348, and 701.

**§ 186.800 [Removed]**

b. In § 186.800 by transferring the entries in the table and alphabetically adding them to the table in paragraph (a) of § 180.410, and by removing the remainder of § 186.800.

[FR Doc. 97–23975 Filed 9-9-97; 8:45 am]

BILLING CODE 6560–50–F

---

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Part 1810

**[WO–420–1050–00–24–1A]**

**RIN 1004–AC 81**

## Public Land Records

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** This final rule amends Part 1810 of Title 43 of the Code of Federal Regulations (CFR) by completely removing Subpart 1813. That subpart contains general information about public land records and explains Bureau of Land Management (BLM) practices. Instead, we will place these internal procedures in information brochures and BLM's manual system, which is appropriate given the administrative nature of Subpart 1813.

**EFFECTIVE DATE:** October 10, 1997.

**ADDRESSES:** You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, NW, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Frances Watson, Telephone: 202–452–5006 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Final Rule as Adopted
III. Responses to Comments
IV. Procedural Matters

### I. Background

One of the objectives of President Clinton's regulatory reform initiative is to eliminate unnecessary regulations from the CFR. To meet that objective, BLM is removing from the CFR material that provides general information about public land records and explains BLM practices. Instead, BLM will provide this information in public information releases and the BLM Manual, both of which are available to the public, are more detailed, and can be more easily updated. Removing this material from the CFR will not deprive the public of any notice, right, administrative process or information required by law.

The final rule published today is a stage of the rulemaking process that will culminate in the removal of the regulations in 43 CFR Subpart 1813. This rule was preceded by a proposed rule that was published in the **Federal Register** on December 23, 1996 (61 FR 67517). The BLM invited public comments for 60 days, and received three comments—one from a petroleum association, one from a county government agency, and one from a law firm.

### II. Final Rule as Adopted

The final rule completely removes 43 CFR subpart 1813, which contains BLM procedures on maintaining the public land records. Removing this material is appropriate since it will continue to be available to the public through other means—informational brochures and the BLM manual system. The final rule is being published without change from the December 23, 1996, proposed rule.

### III. Responses to Comments

The three comments that we received on the proposed rule expressed concern about removing 43 CFR subpart 1813. The commenters interpreted the regulation to mean that BLM will no

longer maintain the public land records and that those records will no longer be available for public access in BLM field offices.

In reality, BLM is required by law and administrative practice to maintain the official public land records. This regulation will neither change our recordkeeping responsibility nor change public access to those records in BLM field offices. This regulation will merely remove procedural material from the CFR and place it in more appropriate alternative sources—public information releases and the BLM manual system. For these reasons, the final rule is being published unchanged from the proposed rule.

## IV. Procedural Matters

*National Environmental Policy Act of 1969*

BLM has prepared an environmental assessment (EA), and has found that the final rule would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact on file in the BLM Administrative Record at the address specified previously. BLM invites the public to review these documents by contacting us at the address listed above (see **ADDRESSES**).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that the Office of Management and Budget must approve under 44 U.S.C. 3501 *et seq.*

*Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the discussion in the preamble above, that the regulation will remove unnecessary material from the CFR, BLM anticipates that this final rule will have no impact on the public at large. Therefore, BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

Removal of 43 CFR 1813 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

*Executive Order 12612*

The final rule will not have a substantial direct effect on the States, on the relationship between the Federal 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, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

*Executive Order 12630*

The final rule does not represent a Government action capable of interfering with constitutionally protected property rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

*Executive Order 12866*

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

*Executive Order 12988*

The Department has determined that this rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Author: The principal author of this rule is Frances Watson, Bureau of Land Management, 1849 C Street, NW, Washington, D.C. 20240; Telephone: 202–452–5006 (Commercial or FTS).

## List of Subjects in 43 CFR Part 1810

Administrative practice and procedure, Archives and records.

Dated: September 4, 1997.

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, part 1810 of Title 43 of the Code of Federal Regulations is amended as set forth below:

## PART 1810—INTRODUCTION AND GENERAL GUIDANCE

1. The authority for Part 1810 is revised to read:

**Authority:** 43 U.S.C. 1740.

## Subpart 1813—[Removed]

2. Subpart 1813 is removed.

[FR Doc. 97–23935 Filed 9–9–97; 8:45 am]

BILLING CODE 4310–84–P

---

## OFFICE OF PERSONNEL MANAGEMENT

## 48 CFR Parts 1602, 1603, 1604, 1615, 1616, 1629, 1631, 1643, 1644, 1645, 1649, 1652, and 1653

**RIN 3206–AH45**

## Federal Employees Health Benefits Program Acquisition Regulation; Truth in Negotiations Act and Related Changes

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final regulation amending the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) to implement those portions of the Federal Acquisition Streamlining Act of 1994 (FASA) that impact on the FEHB Program.

**EFFECTIVE DATE:** October 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Mercer, (202) 606–0004.

**SUPPLEMENTARY INFORMATION:** On June 24, 1996, OPM issued a proposed regulation in the **Federal Register** [61 FR 32401] to inform Federal Employees Health Benefits (FEHB) Program carriers, Federal agencies, and the public how it intends to implement those portions of the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103–355, effective October 13, 1994, affecting the FEHB Program. The changes proposed also reflect how OPM intends to implement sections 4201 through 4204 of the Federal Acquisition Reform Act of 1996 (FARA), Public Law 104–106, enacted on February 10, 1996.

OPM received comments from one private citizen and five organizations: Two FEHBP carriers, a trade association representing health maintenance organizations (HMOs), preferred provider organizations (PPOs), and other network plans, an association that represents FEHB Program fee-for-service carriers, and a contract law group. We appreciate the observations and suggestions offered and have taken them into consideration in these regulations.

The majority of the comments were favorable toward OPM's efforts to

implement the provisions of the Truth in Negotiations Act (TINA) as amended by FASA to the extent that the regulation brings the FEHBAR into conformance with the Federal Acquisition Regulation (FAR). Nevertheless, there were a number of concerns regarding provisions on the submission of cost or pricing data, as well as those concerning Similarly Sized Subscriber Groups (SSSGs). These, as well as other comments, are addressed as follows.

**Effective Date of the Regulation**

One of the comments concerned a perceived inconsistency in the proposed effective date and the application of the regulation with regard to SSSGs. The regulation will be applicable to the rate instructions issued for the 1998 FEHB contract year. In the opinion of the commenter, however, it appeared that OPM had already implemented many of the changes administratively through the rate instructions for the 1997 contract year. We would like to clarify any misconception that OPM issues policy material in the FEHBP rate instructions. The rate instructions contain guidance, clarifying information and examples that elaborate on and describe how the policy in existing regulations is to be implemented. The regulations introduce no changes in OPM's policy with respect to SSSGs. The treatment of multi-year contracts and the requirement that groups with point of service (POS) plans and separate lines of business be included for consideration as SSSGs have been the long standing practice under the SSSG concept.

**Intent of FASA/TINA**

Two commenters believe OPM has overlooked the intent of FASA to minimize burdensome requirements, such as the requirement to submit cost or pricing data, placed on Federal contractors. OPM understands the commenters' concerns; however, we believe they overlook the fact that Congress continues to recognize the need for cost or pricing data where necessary to determine reasonableness of a price. Accordingly, when the Government purchases a product or service that is not a commercial item offered to the Government without modification and in the same form in which it is sold in the commercial marketplace, it is appropriate under the FAR and TINA to require cost or pricing data to establish price reasonableness. As we stated in the preamble to the proposed rule, with the complexities of the FEHB Program carriers' rating systems, it is inaccurate to say that OPM is buying a commercial off-the-shelf item or that the product that OPM purchases is purchased at a market or catalog price. Thus, the FEHB Program community rated contracts are neither contracts for commercial items, nor are they catalog or market price contracts as those terms are intended by FASA, FARA, and the FAR.

One commenter noted that the purchase of insurance and HMO services is typically governed by State insurance regulators and that OPM, in obtaining cost or pricing data, is not only acting as a purchasing agent, but is also performing a regulatory function akin to that of a State insurance regulator. The commenter believes that the application of the principles embodied in the proposed regulation to the FEHB Program contracts is the minimum that OPM should require of contractors given the substantial responsibilities placed upon OPM to obtain the best possible terms, conditions, price and value for the Government and enrollees in the FEHB Program.

**Cost or Pricing Data**

Prior to the enactment of Public Law 100–517, the Health Maintenance Organization Amendments of 1988, community rated contracts resembled market price contracts. Consequently, for lack of a more precise fit with any other contract type, OPM identified the community rated contracts as market price contracts when it initially published regulations to implement the Act. These regulations were effective January 1, 1990, before OPM had been able to assess the impact of the 1988 amendments.

Historically, a community rate was more analogous to a market price and services under FEHB Program contracts were more commonly thought of as commercial items, because the community rate was often a single rate that an HMO charged all of its groups. This is no longer true today. The 1988 HMO amendments introduced a new level of complexity into the community rating process. The 1988 HMO amendments authorized community rated plans to use a new rating method called Adjusted Community Rating (ACR). In spite of its name, ACR is actually a form of experience rating, that is, prospective experience rating.

Determining the reasonableness of the rates under ACR requires cost or pricing data. Moreover, cost or pricing data is fundamental to the development of the FEHB Program premiums. OPM has a responsibility under the FEHB law to ensure that the FEHB Program premiums ''reasonably and equitably reflect the cost of benefits provided'' [5 U.S.C. 8902(i)]. In carrying out this statutory mandate, OPM needs cost or pricing data to achieve a fair and reasonable premium rate for Federal enrollees. There are almost 400 plans in the Program, and the premium is divided, with an average of 28% being paid by enrollees and 72% being paid from Government funds. Thus, both parties have a major financial interest in the reasonableness of the rates.

Furthermore, we would like to point out that the FEHB Program premiums, once transmitted to OPM, are placed in a trust and are trust fund monies which OPM has a statutory mandate to protect. OPM places the premium monies collected in the U.S. Treasury for payment to the FEHB Program carriers. The FEHB law authorizes the Secretary of the Treasury to invest and reinvest the monies, as well as the interest earned on their investments. Because of the nature of these monies, OPM has a fiduciary responsibility to ensure a reasonable and equitable rate for Federal enrollees as well as for the Government. One of the ways OPM accomplishes this is to require the same discounts for the FEHB Program that are enjoyed by the SSSGs; and analyzing cost or pricing data is the only way OPM can achieve accountability. The practice of requesting the data is widely accepted in the insurance industry and, although we have requested this data for over 20 years, no FEHB Program carrier has advised us that it was burdensome.

By these regulations, we are implementing FASA, FARA, and the FAR in the manner which best enables us to comply with the responsibility that the FEHB law places on OPM. One has only to trace the FEHBAR amendments over the years to understand that OPM has been trying, to the maximum extent it could, to reconcile the Congressional intent behind the HMO amendments with the FEHB law. OPM has attempted to fit FEHB Program contracts into existing contract types under the FAR, which lists contract types that were never entirely appropriate to our situation. Accordingly, because of the unique nature of the FEHB Program contracts, we are categorizing them as negotiated benefits contracts to reflect more accurately their actual nature.

One commenter suggested that OPM require pricing data only, and that cost analysis is not an aspect of establishing the price of health benefits coverage with large group purchasers. We disagree. Cost data, the most fundamental of which is claims data, prescription drug, hospital, and office visit benefits utilization data, and trend

data, are essential in evaluating the rate under ACR (experience rating). The same commenter believes that, traditionally, when OPM has asked for cost information it has generally been to examine the derivation of the price for a specific benefit or loading. Prior to the 1988 HMO amendments, this was true. To a certain extent, OPM's rate review was fairly straightforward before the 1988 HMO amendments authorized alternative methods of community rating. Before 1981, community rating was relatively simple, in that a group's rates were normally based on the same underlying capitation rate (i.e., per member per month rate). But, even under this early version of community rating, a group's rates could not properly be thought of as a market price. This is because, from the enactment of the HMO Act of 1973 onward, the community rating theory has always allowed for various demographic adjustments that caused each group's rates to be uniquely related to the characteristics of the group.

In 1981, when the HMO Act of 1973 was amended to allow Federally qualified plans to use Community Rating by Class (CRC), the situation became much more complex. Under CRC, the plan could adjust the community rates by a CRC factor which was derived by partitioning the group into classes and applying so-called utilization factors, which predicted differences in the use of HMO services by individuals or families in each class.

But, in 1988, the 1988 HMO amendments radically altered the nature of community rating by allowing Federally qualified plans to use Adjusted Community Rating (ACR). In retrospect, we have come to realize that no rate based on ACR can possibly be construed to be a market price. After the legislation was enacted and OPM's 1990 regulations were published, OPM began to experience difficulties in verifying the carriers' community rate. We continue to ask for cost and pricing data for computing the rates under Traditional Community Rating (TCR) and CRC. And, for ACR, we ask for all of the data developed for both the FEHB Program and the SSSGs, which includes cost data.

Contrary to the commenter's beliefs, these carriers using ACR do not derive their rates from a single rate. Rather, these carriers base their rate directly on the past experience of the Federal group. In no sense can such a rate be considered a market price. The Act stated that, under ACR, the rate for a particular group could be based on the organization's revenue requirements for providing service to the group. This means that ACR is a form of experience rating and, as such, requires cost data. Thirty-five percent of the FEHB plans use ACR to rate the Federal group, and the number of these plans is increasing each year. Approximately thirty percent of the plans currently in the FEHB Program use CRC to rate the Federal group.

Two commenters were concerned that proposed FEHBAR 1602.170–5 does not define cost or pricing data, but simply refers to the rate instruction package. One of these commenters believes that the list of cost or pricing data should be identified in regulation because the FAR does not give agencies authority to set price guidelines outside the scope of the regulation.

In placing clarifying details in the rate instructions, OPM was simply conforming to the principles of the Administration's National Performance Review (NPR). A key element of the NPR is the replacing of agency rules with policy directives and instructions, where appropriate. Nevertheless, to assist the carriers in understanding what OPM considers cost or pricing data, we have decided to cite in the regulation some examples of the types of data that OPM considers to be cost or pricing data. Like the examples listed in the FAR, the list is illustrative and is not exhaustive. Additional data may be requested in the rate instructions as deemed necessary by OPM for a particular contract year. Again, this type of detail is merely clarifying information and does not represent policy change. It conforms to the definition of cost or pricing data in TINA and is information that OPM has frequently requested in the past.

One commenter noted that in the Supplementary Information to the proposed rule OPM included actuarial estimates in its description of cost or pricing data. The commenter stated that actuarial estimates are judgmental and not factual and suggested that OPM remove these from consideration as cost or pricing data. We are aware that FAR 15.801 defines ''cost or pricing data'' as factual and not judgmental, and we believe that we are in compliance with the definition. OPM uses actuarial estimates not to question what judgment the carrier used in its actuarial estimates, but to verify, for example, that if an actuarial estimate of 10% increase in claims was used for the FEHBP group, the methodology used to establish that estimate was also used in setting the SSSGs rates. In other words, OPM is not questioning what judgment the carrier has applied in its projections, but the facts upon which its projections are based.

One commenter is concerned that the regulation will authorize OPM to collect data that are difficult to collect and submit and that are not directly related to OPM's responsibility to evaluate the reasonableness of the prices given to the SSSGs. The respondent noted that the FAR authorizes agencies to obtain ''other than cost or pricing data,'' which the commenter believes is sufficient to verify prices. We would like to reiterate that OPM will not ask for different data than it currently requests in the rate setting process. However, the kind of data that we ask for will be determined by the plan with regard to how it chooses to rate its SSSGs. We look only at data directly related to our responsibility under the FEHB law to evaluate a proposed rate in order to ensure that the FEHBP rates accurately reflect the cost of benefits provided. OPM neither requests nor desires information that is irrelevant to this objective. Further, OPM disagrees with the commenter that data other than cost or pricing data are sufficient to verify prices.

**SSSGs**

One commenter is concerned that the legitimacy of a loading can be based on non-SSSG rating practices. The commenter believes that this is inconsistent with the SSSG concept. As stated in the OPM Reconciliation Guidelines, the OPM audit staff may examine the rates and benefit loadings of non-SSSG groups. The purpose of such analysis is to make certain that the Federal group rates are fair in relation to the SSSG rates. As one example (given in the guidelines), if an SSSG had a special benefit not included in the Federal group benefit package, OPM would compare what the plan charged the SSSG with what it charged non-SSSG groups for the benefit. Only by examining the non-SSSG groups would we be able to determine if the SSSG had been given a discount to its overall rates via a discount to the special loading. We do, however, agree with the commenter that another example given in the guidelines pertaining to late payment loadings is not a good example to justify the principle of examining non-SSSG groups. We will remove this example from future guideline documents.

Another commenter believes that OPM fails to consider the contract requirement that the FEHB rate be reconciled to the SSSG rates after the contract period has begun. As part of the reconciliation process, the contractor must provide information related to the rates offered to the five groups closest in size to the Federal group. The commenter believes that requiring cost

or pricing data for these contracts is entirely inconsistent with the purpose of the reconciliation process.

For non-SSSGs, OPM simply asks the carriers to list the plans they did not select as SSSGs. However, OPM may ask the carrier to explain why it did not select one or more as an SSSG. OPM has stated over the years that it reserves the right to examine the rate development of non-SSSG groups. OPM looks at a carrier's other groups only if all the necessary information is not in the SSSG. For example, verifying that there is no group closer in size to the Federal group than the plan's chosen SSSGs could require analysis of non-SSSG groups. OPM will verify such things as differences in loading and whether the carrier has hidden a discount in a loading. We want to emphasize that the sole purpose of such analysis is to make certain that the Federal group's rates are equivalent to the SSSGs' rates. However, if we find that the SSSG is not closest in size or if an SSSG had a special benefit (e.g., dental benefit) not included in the Federal group benefit package, we would compare what the carrier charged the SSSG with what it charged other groups for this benefit. The purpose would be to verify that the SSSG received no discount. Carriers need not be concerned that an OPM review of a non-SSSG commercial group makes it a potential SSSG. We would like to point out, though, that such comparisons with non-SSSGs could work to the carrier's advantage as well as to its disadvantage if a non-SSSG was not given a discount.

**SSSGs/Regional Rating Areas**

One of the commenters noted that a carrier may have to select an SSSG from an entirely different area within a State even if that group has no Federal employees in the rating area. This concerned the commenter since the group rates in one regional rating area may be significantly different than the rates in another area. The commenter stated that it is unclear how OPM would adjust the rates of an SSSG in one area to measure the Federal group in another area and suggests that OPM limit its SSSG analysis to groups within a single FEHBP rating area. This type of situation is not new to us. In such cases, we focus on whether the carrier gave the groups a discount and whether it is applying the rating method consistently. The rating method or benefit structure may be entirely different and is, in fact, irrelevant.

**SSSGs/Purchasing Alliances**

One commenter suggested that OPM either remove the limitation on the maximum number of employees allowable in a purchasing alliance, or increase the number to 200, because some States offer voluntary alliances in which the State may also dictate the rates. In addition, two commenters believe that no State mandated purchasing alliance should be treated as an SSSG because the alliances are not voluntary and are usually a condition of doing business in the State, which distinguishes them from the carriers' normal lines of business. After considering the comments, we have adopted the suggestion that all alliances be excluded from consideration as SSSGs where the State mandates how the rate is set.

We are also confirming that POS plans whose rate-setting is mandated by the State may be excluded from consideration as SSSGs. However, a POS plan whose rate-setting is not State-mandated must be considered as an SSSG, even though it is primarily experience rated. Usually the plan uses ACR and should not be excluded, regardless of the portion of its services provided out of plan. We have had comparable experience with ACR plans since 1988, and the rate setting for POS plans with a large percentage of out-of-plan services is no more difficult to accomplish than ACR. As we have said before, experience shows that we have to be inclusive in considering plans as SSSGs. OPM has always recognized that the rating method for the Federal group is not necessarily the same as its SSSGs.

OPM received a few plan-specific questions about SSSGs, which we are reluctant to answer without more information. We will answer these types of questions on an individual basis at the time of the rate reconciliation.

One commenter believes that the regulations should establish audit standards that restrict OPM's Inspector General (IG) auditors to comparing the prices charged to the SSSGs and to reviewing the information necessary to verify that the SSSGs are appropriate. By statute, OPM's Inspector General operates independently of OPM, and OPM is not authorized to regulate to restrict its authority. We would like to point out, however, that the IG looks only at data directly related to OPM's responsibility under the FEHB law to evaluate a proposed rate in order to ensure that the rates accurately reflect the cost of benefits provided. The kind of data that the auditors would look at will be determined by the plan with respect to how it chooses to rate its SSSGs.

**SSSGs/Multi-year contracts**

One commenter believes OPM should not be allowed to isolate a specific year in a multi-year contract to determine that a discount occurred. Our intent is that if a plan's rates are affected by the length of time the group signs up with the plan, then we simply want to be able to capture that data. If the rates are affected, then we have to make our analysis based on all the years that affect the rate.

A commenter asked that OPM confirm its understanding that if the aggregate revenues on a per member per month (PMPM) basis for the Federal group are equivalent to or less than the corresponding aggregate revenues for the SSSG, the carrier will be in compliance with its community rating requirements with respect to that SSSG. OPM confirms that under this scenario the carrier would be in compliance with its community rating requirements.

The same commenter would also like clarification of OPM's policy with regard to multi-year contracts in which the group has the option of renewing the agreement in any given year and does not renew. OPM considers the contracts to be single-year agreements if the group terminates the contract.

**Miscellaneous**

We converted FAR clauses 52.229–6, Taxes—Foreign Fixed-Price Contracts, 52.243–1, Changes—Fixed Price, 52.245–2, Government Property (Fixed-Price Contracts), 52.249–2, Termination for Convenience of the Government (Fixed-Price), and 52.249–8, Default (Fixed-Price Supply and Service) to FEHBAR clauses and have deleted language that does not apply to negotiated benefits contracts.

We have clarified the cost principle at 1631.205–75(b) pertaining to selling costs to provide that personnel and related travel costs are allowable for attendance at Open Season Health Fairs and other similar activities where carriers give enrollees information about their choices among health plans. Such events are not limited to those sponsored by Government agencies, but may be sponsored by other groups as well.

One comment concerned 1652.215–70(b)(1)(iii), which states that if the contracting officer determines that a price or cost reduction should be made, the carrier may not raise as a defense the argument that the contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract. The commenter states that community rated contracts

are based on price, not cost, analysis and cites FAR 15.803(c), which provides that price negotiation does not require that agreement be reached on every element of cost. The commenter believes, therefore, that individual components of cost should not be subject to revision on audit. OPM classified its review as price analysis pursuant to the HMO amendments because it had been working with a simplified form of price analysis up to that point, although technically even these community rated contracts included an element of cost. But, after we gained some experience with ACR (experience rating), we began to look not only at special benefits loadings, but also at elements of the basic community rate, such as demographic factors. Our approach has been consistent with the FAR definition of ''price,'' which states that price is cost plus any fee or profit applicable to the contract type. For the reasons stated earlier, OPM is no longer classifying FEHB contracts as market price, and OPM will collect both cost and pricing data. The new regulations reflect this fact by clarifying that community rated contracts are based on a combination of cost and price analysis. FEHBAR 1652.216–70(b)(1)(iii) is taken verbatim from FAR 52.215–22(c)(1)(iii) and is appropriate when both cost and pricing data are required.

The same commenter took exception to the requirement in 1652.215–70(b)(2)(ii)(A), which restricts a carrier's right to claim an offset to an audit finding when the understated data was known by the carrier to be understated at the time the certificate of current cost or pricing data was signed. The commenter believes this provision is inconsistent with FEHBAR 1652.215–70(b)(2)(i)(B) which allows a carrier to revise a price following an audit finding if it proves that the cost or pricing data were available before the date of agreement on the price of the contract and that the data were not submitted before such date. We would like to point out that these provisions are not inconsistent with the FAR. In fact, they are repeated verbatim from the FAR. Section 1652.215–70(b)(2)(ii)(A) prohibits an offset if the carrier deliberately understated the data at the time the certificate of current cost or pricing data was signed. OPM would not allow an offset under these circumstances. In FEHBAR 1652.215–70(b)(2)(i)(B), however, the carrier is allowed to prove that the data were not submitted before the date of agreement on the price because of a mistake on its part. OPM would allow the offset if the proof offered by the carrier was clear and convincing.

One commenter suggested that OPM increase the threshold for preapproval of subcontracts to $200,000 to account for inflation since the FEHBAR was first published in 1987. OPM has decided not to increase the threshold at this time, but will consider doing so in a future amendment to the FEHBAR.

We are withdrawing our proposal to insert FAR 52.222–25, Affirmative Action Compliance, in the Matrix because the clause is a preaward clause that is intended to be inserted in solicitations. FEHB Program contracts, by law, are exempted from competitive bidding requirements, and OPM uses alternative methods of inviting health benefits carriers to apply for participation in the FEHB Program.

We are withdrawing our proposal to add a requirement in 1652.222–70, Notice of Significant Events, that carriers should inform OPM at the time of a novation or change of name, rather than after the novation or change of name occurs. OPM has determined that FEHBAR 1642.1204 and 1642.1205 sufficiently address OPM's concerns that carriers are required to notify OPM of a novation and/or a change of name in a timely manner.

We have made a technical correction to 1652.232–71(c) that was inadvertently omitted from OPM's interim regulation of April 20, 1992, and published as a final rule on November 16, 1992 [57 FR 53981]. That is, we have removed from the regulation the reference to the ability of underwriters to make drawdowns from carriers' letter of credit (LOC) accounts. OPM guidelines allow a carrier to delegate its authority to make drawdowns from its LOC account to the underwriter of its plan.

We have also included in the final regulations minor technical and editorial changes and minor changes to the definitions of ''Carrier'' and ''Health benefits plan'' to more closely align them with the definitions contained in the National Association of Insurance Commissioners (NAIC) guidelines.

## Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because all of the small plan FEHB Program contracts fall below the threshold for submitting cost or pricing data.

## List of Subjects in 48 CFR Parts 1602, 1603, 1604, 1615, 1616, 1629, 1631, 1643, 1644, 1645, 1649, 1652, and 1653

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM is amending Chapter 16 of Title 48, Code of Federal Regulations, as follows:

## CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

1. The authority citation for 48 CFR Parts 1602, 1603, 1604, 1615, 1616, 1631, 1644, 1649, 1652, and 1653 continues to read as follows:

**Authority:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

## PART 1602—DEFINITIONS OF WORDS AND TERMS

2. Section 1602.170–1 is revised to read as follows:

### 1602.170–1 Carrier.

*Carrier* means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, delivering, paying for, or reimbursing the cost of health care services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, including a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services, in consideration of premiums or other periodic charges payable to the carrier.

3. In § 1602.170–2, paragraph (a) is revised to read as follows:

### 1602.170–2 Community rate.

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan carrier. References in this subchapter to ''a combination of cost and price analysis'' relating to the applicability of policy and contract clauses refer to comprehensive medical plan carriers using community rates.

* * * * *

4. Sections 1602.170–10 through 1602.170–12 are redesignated as §§ 1602.170–12 through 1602.170–14 respectively, §§ 1602.170–5 through 1602.170–9 are redesignated as §§ 1602.170–6 through 1602.170–10, new §§ 1602.170–5 and 1602.170–11 are added, and newly redesignated §§ 1602.170–9 and 1602.170–13 are revised to read as follows:

**1602.170–5 Cost or pricing data.**

(a) *Experience rated carriers.* Cost or pricing data for experience rated carriers includes information such as claims data; actual or negotiated benefits payments made to providers of medical services for the provision of health care such as capitation not adjusted for specific groups, per diems, and Diagnostic Related Group (DRG) payments; cost data; utilization data; and administrative expenses and retentions.

(b) *Community rated carriers.* Cost or pricing data for community rated carriers is the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and the similarly sized subscriber groups (SSSGs). Such data include, but are not limited to, capitation rates; prescription drug, hospital, and office visit benefits utilization data; trend data; actuarial data; rating methodologies for other groups; standardized presentation of the carrier's rating method (age, sex, etc.) showing that the factor predicts utilization; tiered rates information; ''step-up'' factors information; demographics such as family size; special benefit loading capitations; and adjustment factors for capitation.

* * * * *

**1602.170–9 Health benefits plan.**

*Health benefits plan* means a group insurance policy, contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, arranging for, delivering, paying for, or reimbursing any of the costs of health care services.

* * * * *

**1602.170–11 Negotiated benefits contracts.**

*Negotiated benefits contracts* are FEHBP contracts in which benefits provided and subscription income are based on either community rating or experience rating.

* * * * *

**1602.170–13 Similarly sized subscriber groups.**

(a) *Similarly sized subscriber groups* (SSSGs) are a comprehensive medical plan carrier's two employer groups that:

(1) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(2) Use any rating method other than retrospective experience rating; and,

(3) Meet the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an FEHB carrier enters into an agreement to provide health care services is a potential SSSG (including separate lines of business, government entities, groups that have multi-year contracts, and groups having point-of-service products).

(c) Exceptions to the general rule stated in paragraph (b) of this section are (and the following groups must be excluded from SSSG consideration):

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the carrier's own employees;

(3) Medicaid groups, Medicare groups, and groups that have only a stand alone benefit (such as dental only);

(4) A purchasing alliance whose rate-setting is mandated by the State or local government.

(d) OPM shall determine the FEHBP rate by selecting the lower of the two rates derived by using rating methods consistent with those used to derive the SSSG rates.

## PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 1603.70 [Amended]

5. In subpart 1603.70, sections 1603.701, 1603.702, and 1603.703 are redesignated as sections 1603.7001, 1603.7002, and 1603.7003 respectively.

## PART 1604—ADMINISTRATIVE MATTERS

**1604.705 [Amended]**

6. In subpart 1604.7, section 1604.705 is amended by removing the words ''Audit—Negotiation,'' and adding in its place ''Audit & Records—Negotiation.''

## PART 1615—CONTRACTING BY NEGOTIATION

7. Section 1615.802 is revised to read as follows:

**1615.802 Policy.**

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.8 shall be implemented by applying the policies and procedures—to the extent practicable—as follows:

(a) For both experience rated and community rated contracts for which the FEHBP premiums for the contract term will be less than $500,000, OPM shall not require the carrier to provide cost or pricing data in the rate proposal for the following contract term.

(b) Cost analysis shall be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(c)(1) A combination of cost and price analysis shall be used for contracts where premiums and subscription income are based on community rates. For contracts for which the FEHBP premiums for the contract term will be less than $500,000, OPM shall not require the carrier to provide cost or pricing data. The carrier must submit only a rate proposal and abbreviated utilization data for the applicable contract year. OPM will evaluate the proposed rates by performing a basic reasonableness test on the information submitted. Rates failing this test will be subject to further review.

(2) For contracts with fewer than 1,500 enrollee contracts for which the FEHBP premiums for the contract term will be $500,000 or more, OPM shall require the carrier to submit its rate proposal, utilization data, and the certificate of accurate cost or pricing data required in 1615.804–70. In addition, OPM shall require the carrier to complete the proposed rates form containing cost and pricing data, and the Community Rate Questionnaire, but shall not require the carrier to send these documents to OPM. The carrier shall keep the documents on file for periodic auditor and actuarial review in accordance with 1652.204–70. OPM shall perform a basic reasonableness test on the data submitted. Rates that do not pass this test shall be subject to further OPM review.

(3) For contracts with 1,500 or more enrollee contracts for which the FEHBP premiums for the contract term will be at least $500,000, OPM shall require the carrier to provide the data and methodology used to determine the FEHBP rates. OPM shall also require the data and methodology used to determine the rates for the carrier's similarly sized subscriber groups. The carrier shall provide cost or pricing data required by OPM in its rate instructions for the applicable contract period. OPM shall evaluate the data to ensure that the

rate is reasonable and consistent with the requirements in this chapter. If necessary, OPM may require the carrier to provide additional documentation.

(4) Contracts shall be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments shall be based on the lower of the two rates determined by using the methodology (including discounts) the Carrier used for the two SSSGs.

(5) FEHBP community rated carriers shall comply with SSSG criteria provided by OPM in the rate instructions for the applicable contract period.

(d) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based, in whole or in part, on cost analysis.

8. Section 1615.804–70 is revised to read as follows:

**1615.804–70 Certificate of cost or pricing data for community rated carriers.**

The contracting officer shall require a carrier with a contract meeting the requirements in 1615.802(c)(2) or 1615.802(c)(3) to execute the Certificate of Accurate Cost or Pricing Data contained in this section. A carrier with a contract meeting the requirements in 1615.802(c)(2) shall complete the Certificate and keep it on file at the carrier's place of business in accordance with 1652.204–70. A carrier with a contract meeting the requirements in 1615.802(c)(3) shall submit the Certificate to OPM along with its rate reconciliation, which is submitted during the first quarter of the applicable contract year.

**Certificate of Accurate Cost or Pricing Data for Community Rated Carriers**

This is to certify that, to the best of my knowledge and belief: (1) The cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting Officer or the Contracting Officer's representative or designee, in support of the _____* FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract and are accurate, complete, and current as of the date this certificate is executed; and (2) the methodology used to determine the FEHBP rates is consistent with the methodology used to determine the rates for the carrier's Similarly Sized Subscriber Groups.

Firm: _____

Name: _____

Signature: _____

Date of Execution: _____

* Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.

(End of Certificate)

**1615.804–7 [Removed and reserved]**

9. Section 1615.804–71 is removed and reserved.

10. Section 1615.804–72 is revised to read as follows:

**1615.804–72 Rate reduction for defective pricing or defective cost or pricing data.**

The clause set forth in section 1652.215–70 shall be inserted in FEHBP contracts for $500,000 or more that are based on a combination of cost and price analysis (community rated).

11. Paragraph (a) of section 1615.805–70 is revised to read as follows:

**1615.805–70 Carrier investment of FEHB funds.**

(a) This paragraph does not apply to contracts based on a combination of cost and price analysis (community rated).

* * * * *

## PART 1616—TYPES OF CONTRACTS

12. Section 1616.102, is revised to read as follows:

**1616.102 Policies.**

All FEHBP contracts shall be negotiated benefits contracts.

### Subpart 1616.2 [Removed]

13. Subpart 1616.2 is removed and subpart 1616.70 is added to read as follows:

### Subpart 1616.70—Negotiated Benefits Contracts

**1616.7001 Clause—contracts based on a combination of cost and price analysis (community rated).**

The clause at section 1652.216–70 shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

**1616.7002 Clause—contracts based on cost analysis (experience rated).**

The clause at section 1652.216–71 shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

14. In Subchapter E, part 1629 is added to read as follows:

## PART 1629—TAXES

### Subpart 1629.4—Contract Clauses

Sec.
1629.402 Foreign contracts.

**Authority:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 1629.4—Contract Clauses

**1629.402 Foreign contracts.**

The clause set forth in section 1652.229–70 shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico.

## PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

15. In subpart 1631.2, section 1631.205–75, paragraph (b), is revised to read as follows:

**1631.205–75 Selling costs.**

* * * * *

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season Health fairs and other similar activities at which carriers give enrollees information about their choices among health plans (but see FAR 31.205–1 ''Public relations and advertising costs'', and The Federal Employees Health Benefits Handbook for Personnel and Payroll Offices, Subchapter S2–3(f) ''Controlling contacts between employees and carriers'').

## SUBCHAPTER G—CONTRACT MANAGEMENT

16. In Subchapter G, part 1643 is added to read as follows:

## PART 1643—CONTRACT MODIFICATIONS

### Subpart 1643.2—Changes

Sec.
1643.205–70 Contract clause.

**Authority:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 1643.2—Changes

**1643.205–70 Contract clause.**

The clause set forth in section 1652.243–70 shall be inserted in all FEHB Program contracts.

## PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

17. In Subpart 1644.1, section 1644.170 is revised to read as follows:

**1644.170 Policy for FEHBP subcontracting consent.**

For all experience rated FEHBP contracts, advance approval shall be

required on subcontracts or modifications to subcontracts when the amount charged against the FEHBP contract exceeds $100,000 and is at least 25 percent of the total cost of the subcontract.

18. In Subpart 1644.2, section 1644.270 is revised to read as follows:

**1644.270 FEHBP contract clause.**

The clause set forth at section 1652.244–70 shall be inserted in all experience rated FEHBP contracts.

19. Part 1645 is added to read as follows:

## PART 1645—GOVERNMENT PROPERTY

### Subpart 1645.3—Providing Equipment

Sec.
1645.303–70 Contract clause.

**Authority:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 1645.3—Providing Equipment

**1645.303–70 Contract clause.**

The clause set forth in section 1652.245–70 shall be inserted in all FEHB Program contracts.

## PART 1649—TERMINATION OF CONTRACTS

20. In subpart 1649.1, sections 1649.101–71 and 1649.101–72 are added to read as follows:

**1649.101–71 FEHBP termination for convenience clause.**

The clause set forth in 1652.249–71 shall be inserted in all FEHBP contracts.

**1649.101–72 FEHBP termination for default clause.**

The clause set forth in 1652.249–72 shall be inserted in all FEHBP contracts.

## SUBCHAPTER H—CLAUSES AND FORMS

## PART 1652—CONTRACT CLAUSES

21. In part 1652, section 1652.000 is revised to read as follows:

**1652.000 Applicable clauses.**

The clauses of FAR subpart 52.2 shall be applicable to FEHBP contracts as specified in the FEHBAR Clause Matrix in subpart 1652.3.

Section and Clause Title

52.202–1 Definitions.
52.203–3 Gratuities.
52.203–5 Covenant Against Contingent Fees.
52.203–7 Anti-Kickback Procedures.
52.203–12 Limitation on Payments to Influence Certain Federal Transactions.
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
52.215–2 Audit and Records—Negotiation.
52.215–22 Price Reduction for Defective Cost or Pricing Data.
52.215–24 Subcontractor Cost or Pricing Data.
52.215–27 Termination of Defined Benefit Pension Plans.
52.215–30 Facilities Capital Cost of Money.
52.215–31 Waiver of Facilities Capital Cost of Money.
52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).
52.219–8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.
52.222–1 Notice to the Government of Labor Disputes.
52.222–3 Convict Labor.
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General.
52.222–21 Certification of Nonsegregated Facilities.
52.222–26 Equal Opportunity.
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts.
52.222–29 Notification of Visa Denial.
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans.
52.222–36 Affirmative Action for Handicapped Workers.
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.
52.223–2 Clean Air and Water.
52.223–6 Drug-Free Workplace.
52.227–1 Authorization and Consent.
52.227–2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.229–3 Federal, State,and Local Taxes.
52.229–4 Federal, State, and Local Taxes (Noncompetitive Contract).
52.229–5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.
52.230–2 Cost Accounting Standards.
52.230–3 Disclosure and Consistency of Cost Accounting Practices.
52.230–5 Administration of Cost Accounting Standards.
52.232–8 Discounts for Prompt Payment.
52.232–17 Interest.
52.232–23 Assignment of Claims.
52.232–33 Mandatory Information For Electronic Funds Transfer Payment.
52.233–1 Disputes.
52.242–1 Notice of Intent to Disallow Costs.
52.242–3 Penalties for Unallowable Costs.
52.242–13 Bankruptcy.
52.244–5 Competition in Subcontracting.
52.244–6 Subcontracts for Commercial Items and Commercial Components.
52.246–25 Limitation of Liability—Services.
52.247–63 Preference for U.S.-Flag Air Carriers.
52.251–1 Government Supply Sources.
52.232–2 Clauses Incorporated by Reference.
52.252–4 Alterations in Contract.
52.252–6 Authorized Deviations in Clauses.

22. In subpart 1652.2, section 1652.203–70 is amended by removing the reference ''1603.703'' and adding in its place ''1603.7003,'' sections 1652.204–70 and 1652.215–70 are revised, section 1652.204–72 is amended by adding a date in the clause title.

**1652.204–70 Contractor records retention.**

As prescribed in 1604.705, the following clause shall be inserted in all FEHBP contracts.

Contractor Records Retention (Jan 1998)

Notwithstanding the provisions of section 5.7 (FAR 52.215–2(f)) ''Audit and Records-Negotiation,'' the Carrier shall retain and make available all records applicable to a contract term that support the annual statement of operations and, for contracts that exceed the threshold at FAR 15.804–2(a)(1), the rate submission for that contract term for a period of 5 years after the end of the contract term to which the records relate, except that enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract term to which the claim records relate.
(End of Clause)

* * * * *

**§ 1652.204–72 Filing Health Benefit Claims/Court of Disputed Claims**

* * * * *

Filing Health Benefit Claims/Court Review of Disputed Claims (Mar 1995)

* * * * *

**1652.215–70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.**

As prescribed in 1615.804–72, the following clause shall be inserted in FEHBP contracts exceeding the threshold at FAR 15.804–2(a)(1) that are based on a combination of cost and price analysis (community rated):

Rate Reduction for Defective Pricing or Defective Cost or Pricing Data (Jan 1998)

(a) If any rate established in connection with this contract was increased because (1) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Cost or Pricing Data (FEHBAR 1615.804–70); (2) the Carrier submitted, or kept in its files in support of the FEHBP rate, cost or pricing data that were not accurate as represented in the rate proposal documents; (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBAR 1602.170–13) as certified in the Certificate of Accurate Cost or Pricing Data for Community Rated Carriers; or (4) the Carrier submitted or, or kept in its files in support of the FEHBP rate, data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information.

(b)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price

or cost reduction should be made, the Carrier agrees not to raise the following matters as a defense:

(i) The Carrier was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted or maintained and identified.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Carrier took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Carrier did not submit or keep in its files a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (b)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Carrier certifies to the Contracting Officer that, to the best of the Carrier's knowledge and belief, the Carrier is entitled to the offset in the amount requested; and

(B) The Carrier proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Carrier to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(c) When the Contracting Officer determines that the rates shall be reduced and the Government is thereby entitled to a refund, the Carrier shall be liable to and shall pay the FEHB Fund at the time the overpayment is repaid—

(1) Simple interest on the amount of the overpayment from the date the overpayment was paid from the FEHB Fund to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used; and,

(2) A penalty equal to the amount of overpayment, if the Carrier knowingly submitted cost or pricing data which was incomplete, inaccurate, or noncurrent.

(End of Clause)

23. Section 1652.215–71 is amended by removing ''(Jan 1991)'' from the title Investment Income and adding in its place ''(Jan 1998)'' and by revising paragraph (f) to read as follows:

**1652.215–71 Investment Income.**

* * * * *

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All lost investment income payable shall bear simple interest at the quarterly rate determined by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause.

* * * * *

24. Section 1652.216–70 is revised to read as follows:

**1652.216–70 Accounting and price adjustment.**

As prescribed in section 1616.7001, the following clause shall be inserted in all FEHBP contracts based on a combination of cost and price analysis (community rated).

Accounting and Price Adjustment (JAN 1998)

(a) *Annual Accounting Statement.* The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment.* (1) This contract is community rated as defined in FEHBAR 1602.170–2.

(2) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber groups (SSSGs) as defined in FEHBAR 1602.170–13.

(3) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the lower of the two SSSGs, the carrier may include an adjustment to the Federal group's rates for the next contract period.

(4) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the lower of the two SSSGs, the Carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the lower rated SSSG.

(5) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(6) In the event this contract is not renewed, neither the Government nor the Carrier shall be entitled to any adjustment or claim for the difference between the subscription rates prior to rate reconciliation and the actual subscription rates.

(End of Clause)

25. In section 1652.216–71, the introductory sentence is revised to read as follows:

**1652.216–71 Accounting and Allowable Cost.**

As prescribed in section 1616.7002, the following clause shall be inserted in all FEHBP contracts based on cost analysis (experience rated).

* * * * *

26. Section 1652.229–70 is added to read as follows:

**1652.229–70 Taxes—Foreign Negotiated benefits contracts.**

As prescribed in section 1629.402, the following clause shall be inserted in all FEHBP contracts performed outside the United States, its possessions, and Puerto Rico:

Taxes—Foreign Negotiated Benefits Contracts (Jan 1998)

(a) To the extent that this contract provides for performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) ''Contract date,'' as used in this clause, means the effective date of this contract or modification.

''Country concerned,'' as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

''Tax'' and ''taxes,'' as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

''All applicable taxes and duties,'' as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

''After-imposed tax,'' as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions covered by this contract that the Carrier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

''After-relieved tax,'' as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions covered by this contract, but which the Carrier is not required to pay or bear, or for which the Carrier obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

''Excepted tax,'' as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. ''Excepted tax'' does not include gross income taxes levied on or measured by sales or receipts from sales covered by this contract, or any tax assessed on the Carrier's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Carrier is required to pay or bear, including any interest or penalty, if the Carrier states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Carrier's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Carrier incident to a refund of taxes to the extent that such interest was earned after the Carrier was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Carrier to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Carrier is required to pay or bear, or does not obtain a refund of, through the Carrier's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(h) If the Carrier obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Carrier shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Carrier, any subcontractor, or the transactions covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Carrier shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Carrier at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

27. Section 1652.232–70 is amended by adding a date in the clause title to read as follows:

**1652.232–70 Payments—community rated contracts.**

* * * * *

Payments (Jan 1989)

* * * * *

28. In section 1652.232–71, paragraph (c) is amended by removing ''and/or underwriter'' and the clause title is amended by adding a date to read as follows:

**1652.232–71 Payments—experience rated contracts.**

* * * * *

Payments (May 1992)

* * * * *

29. Section 1652.243–70 is added to read as follows:

**1652.243–70 Changes—Negotiated benefits contracts.**

As prescribed in section 1643.205–70, the following clause shall be inserted in all FEHBP contracts.

Changes—Negotiated Benefits Contracts (Jan 1998)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Carrier must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Carrier from proceeding with the contract as changed.

(End of clause)

30. Section 1652.244–70 is amended by revising the introductory paragraph, clause date, and paragraph (a) of the clause to read as follows:

**1652.244–70 Subcontracts.**

As prescribed by 1644.270, the following clause shall be inserted in all FEHBP contracts based on cost analysis (experience rated):

Subcontracts (Jan 1998)

(a) The Carrier shall notify the Contracting Officer reasonably in advance of entering into any subcontract, or any subcontract modification, or as otherwise specified by this contract, if both the amount of the subcontract or modification charged to the FEHB Program exceeds $100,000 and is at least 25 percent of the total cost of the subcontract.

* * * * *

31. Section 1652.245–70 is added to read as follows:

**1652.245–70 Government property (negotiated benefits contracts).**

As prescribed in section 1645.303–70, the following clause shall be inserted in all FEHBP contracts.

Government Property (Negotiated Benefits Contracts) (Jan 1998)

(a) Government-furnished property. (1) The Government shall deliver to the Carrier, for use in connection with and under the terms of this contract, the Government-furnished property described in this contract together with any related data and information that the Carrier may request and is reasonably required for the intended use of the property (hereinafter referred to as ''Government-furnished property'').

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished ''as-is'') will be delivered to the Carrier at the times stated in this contract or, if not so stated, in sufficient time to enable the Carrier to meet the contract's performance dates.

(3) If Government-furnished property is received by the Carrier in a condition not suitable for the intended use, the Carrier shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Carrier, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(b) Changes in Government-furnished property. (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Carrier for the Government, under this contract. The Carrier shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Carrier's written request, the Contracting Officer shall make an equitable

adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in this contract to make the property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in Government property. (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Carrier, title to which vests in the Government under this paragraph (collectively referred to as ''Government property''), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) Use of Government property. The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) Property administration. (1) The Carrier shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) subpart 45.5, as in effect on the date of this contract.

(2) The Carrier shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Carrier shall make such repairs as the Government directs. However, if the Carrier cannot effect such repairs within the time required, the Carrier shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Carrier represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Carrier is responsible shall be accomplished by the Carrier at its own expense.

(f) Access. The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss. Unless otherwise provided in this contract, the Carrier assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Carrier. However, the Carrier is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Carrier's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) Final accounting and disposition of Government property. Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Carrier shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Carrier shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) Abandonment and restoration of Carrier's premises. Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Carrier's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

(l) Overseas contracts. If this contract is to be performed outside of the United States of America, its territories, or possessions, the words ''Government'' and ''Government-furnished'' (wherever they appear in this clause) shall be construed as ''United States Government'' and ''United States Government-furnished'', respectively.

(End of clause)

32. In Subpart 1652.2, new sections 1652.249–71 and 1652.249–72 are added to read as follows:

**1652.249–71 FEHBP termination for convenience of the government—negotiated benefits contracts.**

As prescribed in section 1649.101–71, the following clause shall be inserted in all FEHBP contracts.

FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts (Jan 1998)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Carrier a Notice of Termination specifying the extent of terminating and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Carrier shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Carrier under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, deliver to the Government any data, reports, or studies that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(c) After termination, the Carrier shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Carrier shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Carrier within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Carrier fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Carrier because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) of this clause, the Carrier and the Contracting Officer may agree upon the whole or any part of the

amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (d) or paragraph (e) of this clause, exclusive of costs shown in subparagraph (e)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Carrier paid the agreed amount. Paragraph (e) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(e) If the Carrier and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Carrier the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (d) above:

(1) The contract price for completed services accepted by the Government not previously paid for.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to services paid or to be paid under paragraph (e)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (e)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (e)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(f) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(g) The Carrier shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (c), (e), or (i) of this clause, except that if the Carrier failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (c) or (i), respectively, and failed to request a time extension, there is no right of appeal.

(h) In arriving at the amount due the Carrier under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Carrier under the terminated portion of this contract;

(2) Any claim which the Government has against the Carrier under this contract; and

(i) If the termination is partial, the Carrier may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Carrier for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(j)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Carrier for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Carrier will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Carrier shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Carrier to the date the excess is repaid.

(k) Unless otherwise provided in this contract or by statute, the Carrier shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Carrier's costs and expenses under this contract. The Carrier shall make these records and documents available to the Government, at the Carrier's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

### 1652.249–72 FEHBP termination for default—negotiated benefits contracts.

As prescribed in § 1649.101–72, the following clause shall be inserted in all FEHBP contracts.

FEHBP Termination for Default—Negotiated Benefits Contracts (Jan 1998)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Carrier, terminate this contract in whole or in part if the Carrier fails to—

(i) Perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Carrier does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or service similar to those terminated, and the Carrier will be liable to the Government for any excess costs for those supplies or services. However, the Carrier shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Carrier shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Carrier. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Carrier.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Carrier and subcontractor, and without the fault or negligence of either, the Carrier shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Carrier to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Carrier to transfer title and deliver to the Government, as directed by the Contracting Officer, any completed or partially completed information and contract rights that the Carrier has specifically produced or acquired for the terminated portion of this contract.

(f) If, after termination, it is determined that the Carrier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(g) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

## Subpart 1652.3—FEHBP Clause Matrix

33. In subpart 1652.3, § 1652.370 paragraph (a) is amended by removing the words ''established catalog or market price'' in the first sentence and adding in its place the words ''a combination of cost and price analysis;'' and by revising the FEHBP Clause Matrix to read as follows:

### 1652.370 Use of the matrix.

* * * * *

FEHBP CLAUSE MATRIX

| Clause No. | Text reference | Title | Use status | Use with experience rated contracts | Use with community rated contracts |
|---|---|---|---|---|---|
| FAR 52.202–1 | FAR 2.2 | Definitions | M | T | T |
| FAR 52.203–3 | FAR 3.202 | Gratuities | M | T | T |
| FAR 52.203–5 | FAR 3.404(c) | Covenant Against Contingent Fees. | M | T | T |
| FAR 52.203–7 | FAR 3.502–3 | Anti-Kickback Procedures | M | T | T |
| FAR 52.203–12 | FAR 3.808 | Limitation on Payments to Influence Certain Federal Transactions. | M | T | T |
| 1652.203–70 | 1603.703 | Misleading, Deceptive, or Unfair Advertising. | M | T | T |
| 1652.204–70 | 1604.705 | Contractor Records Retention. | M | T | T |
| 1652.204–71 | 1604.7001 | Coordination of Benefits | M | T | T |
| 1652.204–72 | 1604.7101 | Filing Health Benefit Claims/Court Review of Disputed Claims. | M | T | T |
| FAR 52.209–6 | FAR 9.409(b) | Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment. | M | T | T |
| FAR 52.215–2 | FAR 15.105–2(b) | Audit & Records—Negotiations. | M | T | T |
| FAR 52.215–22 | FAR 15.804–8(a) | Price Reduction for Defective Cost or Pricing Data. | M | T | |
| FAR 52.215–24 | FAR 15.804–8(c) | Subcontractor Cost or Pricing Data. | M | T | |
| FAR 52.215–27 | FAR 15.804–8(e) | Termination of Defined Benefit Pension Plans. | M | T | |
| FAR 52.215–30 | FAR 15.904(a) | Facilities Capital Cost of Money. | M | T | |
| FAR 52.215–31 | FAR 15.904(b) | Waiver of Facilities Capital Cost of Money. | A | T | |
| FAR 52.215–39 | FAR 15.804–8(f) | Reversion or Adjustment of Plans for Post Retirement Benefits Other Than Pensions (PRB). | M | T | |
| FAR 52.215–70 | 1615.804–72 | Rate Reduction for Defective Pricing or Defective Cost or Pricing Data. | M | | T |
| 1652.215–71 | 1615.805–71 | Investment Income | M | T | |
| 1652.216–70 | 1616.7001 | Accounting and Price Adjustment. | M | | T |
| 1652.216–71 | 1616.7002 | Accounting and Allowable Cost. | M | T | |
| FAR 52.219–8 | FAR 19.708(a) | Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns. | M | T | T |
| FAR 52.222–1 | FAR 22.103–5(a) | Notice to the Government of Labor Disputes. | M | T | T |
| FAR 52.222–3 | FAR 22.202 | Convict Labor | M | T | T |
| FAR 52.222–4 | FAR 22.305(a) | Contract Work Hours and Safety Standards Act—Overtime Compensation—General. | M | T | T |
| FAR 52.222–21 | FAR 22.810(a)(1) | Certification of Nonsegregated Facilities. | M | T | T |
| FAR 52.222–26 | FAR 22.810(a) | Equal Opportunity | M | T | T |
| FAR 52.222–28 | FAR 22.810(g) | Equal Opportunity Preaward Clearance of Subcontracts. | M | T | T |
| FAR 52.222–29 | FAR 22.810(h) | Notification of Visa Denial | A | T | T |
| FAR 52.222–35 | FAR 22.1308(a) | Affirmative Action for Special Disabled and Vietnam Era Veterans. | M | T | T |

FEHBP CLAUSE MATRIX—Continued

| Clause No. | Text reference | Title | Use status | Use with experience rated contracts | Use with community rated contracts |
|---|---|---|---|---|---|
| FAR 52.222–36 | FAR 22.1408(a) | Affirmative Action for Handicapped Workers. | M | T | T |
| FAR 52.222–37 | FAR 22.1308(b) | Employment Reports on Special Disability Veterans of the Vietnam Era. | M | T | T |
| 1652.222–70 | 1622.103–70 | Notice of Significant Events. | M | T | T |
| FAR 52.223–2 | FAR 23.105(b) | Clean Air and Water | A | T | T |
| FAR 52.223–6 | FAR 23.505(b) | Drug-Free Workplace | A | T | T |
| 1652.224–70 | 1624.104 | Confidentiality of Records | M | T | T |
| FAR 52.227–1 | FAR 27.201–2(a) | Authorization and Consent. | M | T | T |
| FAR 52.227–2 | FAR 27.202–2 | Notice and Assistance Regarding Patent and Copyright Infringement. | M | T | T |
| FAR 52.229–3 | FAR 29.401–3 | Federal, State and Local Taxes. | M | | T |
| FAR 52.229–4 | FAR 29.401–4 | Federal, State and Local Taxes (Noncompetitive Contract). | M | T | |
| FAR 52.229–5 | FAR 29.401–5 | Taxes—Contracts Performed in U.S. Possessions or Puerto Rico. | A | T | T |
| 1652.229-70 | FEHBAR 1629.402 | Taxes—Foreign Negotiated Benefits Contracts. | A | T | T |
| FAR 52.230–2 | FAR 30.201–4(a)(1) | Cost Accounting Standards. | A | T | T |
| FAR 52.230–3– | FAR 30.201–4(b)(1) | Disclosure and Consistency of Cost Accounting Practices. | A | T | T |
| FAR 52.230–6 | FAR 30.201–4(d)(1) | Administration of Cost Accounting Standards. | A | T | T |
| FAR 52.232–8 | FAR 32.111(c)(1) | Discounts for Prompt Payment. | M | T | T |
| FAR 52.232–17 | FAR 32.617(a) Modification: 1632.617 | Interest | M | T | T |
| FAR 52.232–23 | FAR 32.806(a)(1) | Assignment of Claims | A | T | T |
| FAR 52.232–33 | FAR 32.1103(a)&(c) | Mandatory Information for Electronic Funds Transfer Payment. | M | T | T |
| 1652.232–70 | 1632.171 | Payments—Contracts Without Letter of Credit Payment Arrangements. | A | | T |
| 1652.323–71 | 1632.172 | Payments—Contracts With Letter of Credit Payment Arrangements. | A | T | |
| 1652.232–72 | 1632.772 | Non-Commingling of FEHBP Funds. | M | T | |
| 1652.232–73 | 1632.806–70 | Approval for Assignment of Claims. | M | T | T |
| FAR 52.233–1 | FAR 33.215 | Disputes | M | T | T |
| FAR 52.242–1 | FAR 42.802 | Notice of Intent to Disallow Costs. | M | T | T |
| FAR 52.242–3 | FAR 42.709–6 | Penalties for Unallowable Costs. | M | T | |
| FAR 52.242–13 | FAR 42.903 | Bankruptcy | M | T | T |
| 1652.243–70 | 1643.205–70 | Changes—Negotiated Benefits Contracts. | M | T | T |
| FAR 52.244–5 | FAR 44.204(e) | Competition in Subcontracting. | M | T | |
| FAR 52.244–6 | FAR 44.403 | Subcontracts for Commercial Items and Commercial Components. | M | T | |
| 1652.244–70 | 1644.270 | Subcontracts | M | T | |
| 1652.245–70 | FAR 1645.303–70 | Government Property (Negotiated Benefits Contracts). | M | T | T |

FEHBP CLAUSE MATRIX—Continued

| Clause No. | Text reference | Title | Use status | Use with experience rated contracts | Use with community rated contracts |
|---|---|---|---|---|---|
| FAR 52.246–25 | FAR 46.805(a)(4) | Limitation of Liability—Services. | M | T | |
| 1652.246–70 | 1646.301 | FEHB Inspection | M | T | T |
| FAR 52.247–63 | FAR 47.405 | Preference for U.S.-Flag Carriers. | M | T | T |
| 1652.249–70 | 1649.101–70 | Renewal and Withdrawal of Approval. | M | T | T |
| 1652.249–71 | 1649.101–71 | FEHBP Termination for Convenience of the Government—Negotiated Benefits Contracts. | M | T | T |
| 1652.249–72 | 1649.101–72 | FEHBP Termination for Default—Negotiated Benefits Contracts. | M | T | T |
| FAR 52.251–1 | FAR 51.107 | Government Supply Sources. | M | T | |
| FAR 52.252–4 | FAR 52.107(d) | Alterations in Contract | M | T | T |
| FAR 52.252–6 | FAR 52.107(f) | Authorized Deviations in Clauses. | M | T | T |

## PART 1653—FORMS [AMENDED]

34. Part 1653 is amended by removing all references to § 53.215–2(b), § 53.301–1412, and SF–1412 in the chart.

[FR Doc. 97–23883 Filed 9–9–97; 8:45 am]

BILLING CODE 6325–01–P

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

## 49 CFR Parts 1121 and 1150

**[STB Ex Parte No. 562]**

## Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902; Advance Notice of Proposed Transaction

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board), after reviewing public comments filed pursuant to the notice of proposed rulemaking, adopts a 60-day notice requirement for certain transactions in which rail lines are transferred to a new owner or operator under 49 U.S.C. 10901 and 10902. Final regulations implementing the notice requirement are set forth below.

**EFFECTIVE DATE:** October 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

**SUPPLEMENTARY INFORMATION:** By notice of proposed rulemaking served and published in the **Federal Register** on May 1, 1997 (62 FR 23742–44), we sought public comments on our proposal to amend our exemption procedures to establish a 60-day notice to rail employees who work on rail lines undergoing transfer to a new owner or operator. We proposed that the notice requirement would apply to transactions processed pursuant to the Board's exemption authority from: (1) 49 U.S.C. 10902 for Class II rail carriers to acquire or operate additional lines; (2) 49 U.S.C. 10902 for Class III rail carriers to acquire or operate additional rail lines where the lines to be acquired or operated, together with the acquiring carrier's existing lines, would produce annual revenue exceeding $5 million; or (3) 49 U.S.C. 10901 for noncarriers to acquire or operate rail lines where the lines to be acquired or operated would produce annual revenue exceeding $5 million. A number of comments were filed by interested parties, including comments from railroads, railroad associations, rail employee unions, and members of both Houses of Congress. Upon reviewing the comments, the Board is adopting the proposal with some modifications and clarifications based on the public comments received. Additional information is contained in the Board's decision served on [date of service]. To purchase a copy of the decision, write to, call, or pick up in person from: DC News & Data, Inc. (202) 289–4357, 1925 K Street, N.W., Room 210, Washington, D.C. 20006. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

### List of Subjects

*49 CFR Part 1121*

Administrative practice and procedure, Railroads.

*49 CFR Part 1150*

Administrative practice and procedure, Railroads.

Decided: September 2, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**

*Secretary.*

For the reasons set forth in the preamble, the Board amends title 49, Chapter X, parts 1121 and 1150 of the Code of Federal Regulations, to read as follows:

## PART 1121—RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 continues to read as follows:

**Authority:** 5 U.S.C. 553; 49 U.S.C. 10502 and 10704.

2. Section 1121.4 is amended by adding a new paragraph (h) to read as follows:

**§ 1121.4 Procedures.**

* * * * *

(h) In transactions for the acquisition or operation of rail lines by Class II rail carriers under 49 U.S.C. 10902, the exemption may not become effective until 60 days after applicant certifies to the Board that it has posted at the workplace of the employees on the affected line(s) and served a notice of the transaction on the national offices of

the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred.

## PART 1150—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

3. The authority citation for part 1150 continues to read as follows:

**Authority:** 5 U.S.C. 553 and 559; 49 U.S.C. 721(a), 10502, 10901 and 10902.

4. Section 1150.32 is amended by adding a new paragraph (e) to read as follows:

**§ 1150.32 Procedures and relevant dates—transactions that involve creation of Class III carriers.**

* * * * *

(e) If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds $5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

5. Section 1150.35 is amended by revising paragraph (a) to read as follows:

**§ 1150.35 Procedures and relevant dates—transactions that involve creation of Class I or Class II carriers.**

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.32(e).

* * * * *

6. Section 1150.42 is amended by adding a new paragraph (e) to read as follows:

**§ 1150.42 Procedures and relevant dates for small line acquisitions.**

* * * * *

(e) If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds $5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

7. Section 1150.45 is amended by revising paragraph (a) to read as follows:

**§ 1150.45 Procedures and relevant dates-transactions under section 10902 that involve creation of Class I or Class II rail carriers.**

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.42(e).

* * * * *

[FR Doc. 97–23827 Filed 9–9–97; 8:45 am]

BILLING CODE 4915–00–P

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 600

**[Docket No. 970527125–7219–02; I.D. 032797B]**

**RIN 0648–AJ95**

## Magnuson Act Provisions; Appointment of Regional Fishery Management Council Members

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to amend the regulations governing the nomination and appointment of members of regional fishery management councils to establish the procedures applicable to the nomination and appointment to the Pacific Fishery Management Council of a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The purpose of this rule is to implement certain sections of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Sustainable Fisheries Act (SFA) which require such an appointment.

**EFFECTIVE DATE:** September 5, 1997.

**ADDRESSES:** Comments on the collection of information aspects of this rule should be sent to Mr. William Stelle, Jr., Administrator, Northwest Region, NMFS, 76000 Sand Point Way, BIN C15700, Seattle, WA 98115–0070; or to Mr. William Hogarth, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6142 or Rodney McInnis at 562–980–4040.

**SUPPLEMENTARY INFORMATION:** On October 11, 1996, President Clinton signed into law the Sustainable Fisheries Act, which, in pertinent part, amended the Magnuson-Stevens Act to add a seat on the Pacific Fishery Management Council (Pacific Council) exclusively for a representative of an Indian tribe with federally recognized fishing rights:

> The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph (section 302(b)(5)(A)).

Sections 302(b)(5)(B)(i), (ii), and (iii) of the Magnuson-Stevens Act require that representation be rotated among the tribes taking into consideration the qualifications of the individuals on the list, the various rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised, and the geographic area in which the tribe of the representative is located.

NMFS published a proposed rule to implement these provisions of the Magnuson-Stevens Act with a 30-day comment period on July 1, 1997 (62 FR 35468). The comment period was subsequently extended through August 11, 1997, at the request of the Quileute Tribal Council.

As in the proposed rule, the final rule requires the Secretary of Commerce (Secretary) to consult with the Bureau of Indian Affairs (BIA), Department of the Interior, to determine from which Indian tribes to solicit nominations for the Council seat. By statute, NMFS must solicit nominees from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The rule requires the Secretary to solicit written nominations from each tribal government and produce a list of not less than three individuals who are

knowledgeable and experienced regarding the fishery resources affected by the recommendations of the Pacific Council. The Secretary will appoint one individual from this list to the Pacific Council for a term of 3 years. Under the rule, prior service on the Council in a different capacity will not disqualify a nominee proposed by a tribal government. Also, if any tribal representative appointed to the Council vacates the Council seat prior to the expiration of any term, the Secretary may appoint a replacement for the remainder of the vacant term from the original list of nominees or may solicit a new set of nominees following the process described above. Under the rule, no tribal representative may serve more than three consecutive terms in the Indian tribal seat.

The rule requires the Secretary to rotate the appointment of a tribal representative to the Pacific Council among the tribes, taking into consideration the qualifications of the individuals nominated, the various rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised, and the geographic area in which the tribe of the representative is located.

**Comments and Responses**

NMFS received five letters from tribal organizations commenting on the proposed rule. Two letters were received from the Quileute Tribal Council and one letter each from the Hoh Tribe, the Quinault Indian Nation and the Columbia River Inter-Tribal Fish Commission (CRITFC) representing the four Columbia River Treaty Tribes (Yakama, Warm Springs, Umatilla and Nez Perce). These comments and NMFS' responses are summarized below.

*Comment 1:* NMFS did not adequately consult with tribal governments, as required by the Magnuson-Stevens Act, before preparing the proposed rule. The CRITFC suggested that final regulations not be implemented until that deficiency is cured by NMFS.

*Response:* NMFS needed to act quickly to implement procedures to appoint a tribal member to the Council in order to have a tribal representative appointed and seated on the Council for the very important September and November 1997 Council meetings. At these Council meetings, decisions will be made regarding harvestable amounts of Pacific groundfish that will directly affect tribal harvests. NMFS staff consulted informally with the staffs of the CRITFC, Northwest Indian Fisheries Commission (NWIFC), and the Yurok and Hoopa Valley Tribes prior to publication of the proposed rule. NMFS did not formally send the proposed rule to each individual tribal government until after the rule was published for public comment. After the rule was published, it was sent to each individual tribal government to solicit comment during the comment period. At the request of the Quileute Tribe, the comment period was extended until August 11, 1997, to provide additional time for tribal governments to comment. NMFS is publishing the final rule without further delay in order to implement the new provisions for the appointment of a tribal member to the Council before the September Pacific Council meeting.

*Comment 2:* Both the CRITFC and Quileute Tribal Council commented that the appointment of a tribal member to the Council should be rotated among the three tribal regions (*U.S.* v. *Washington* tribes, the Columbia River-*U.S.* v. *Oregon* and Idaho tribes, and the California tribes). The Quileute stated that the Secretary ''shall'' rotate the appointment every three years, and proposed that no tribal representative may serve more than one term. CRITFC commented only that it was their expectation that the ''appointments would rotate among the three Regions.'' The Quinault opposed the required rotation among the three areas every three years and the one-term limit.

*Response:* The Magnuson-Stevens Act, section 302(b)(5)(B), states only that ''Representation shall be rotated among the tribes taking into consideration—(i) the qualifications of the individuals on the list referred to in subparagraph (A), (ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and (iii) the geographic area in which the tribe of the representative is located.'' Although not specifically identifying the areas/regions or tribes among which the appointment shall be rotated, the statute provides the Secretary with the discretion to rotate the appointment among the three regions identified by the two commentators. In addition, as pointed out by the Quinault Indian Nation, requiring rotation of the Council seat each 3 years and limiting the tribal representative to one term appears inconsistent with the provision of the Act that limits the number of times a single individual can hold a Council seat to three consecutive terms. The three term limitation implicitly recognizes the value of experience gained by longer term service. In addition, the statute lists two additional criteria the Secretary must take into account when rotating the seat: The qualifications of the nominees and the rights of the tribes. Therefore, the regulations use the plain language of the statute in the belief that Congress wanted the Secretary to have some discretion in rotating the appointments consistent with the guidance contained in the statute. If Congress had intended the appointment to rotate among three specific regions without exception, the statutory language would have been more specific. *Comment 3:* Both the CRITFC and the Quileute Tribal Council proposed modification of the NMFS-proposed process for appointing a tribal member to the Council. This modification would add an additional step to the process where, after NMFS has solicited initial nominations from each individual tribal government, NMFS would send the list of nominees back to each tribal government so that the tribes could select a preferred nominee from each of the three regions. The Quileute proposal suggested that each tribe would vote for one of the nominees in its area. The Secretary would be required to make the Council appointment from a list of the three nominees with the most votes from each area. The nominees with the most votes from the other two areas would serve as alternates. The CRITFC proposal was similar to the Quileute proposal but not as detailed. CRITFC suggested the same process by which NMFS would return the list of nominees to the tribal governments for them to choose a preferred nominee from each area, but CRITFC would expect the Secretary to ''defer to the tribes in each respective area where there is a consensus on their nominee.'' CRITFC also suggested that the BIA should provide to the NMFS a list of tribes with federally recognized rights and contacts at that tribe, and that the list be provided to each tribe on the list.

*Response:* NMFS believes the idea of providing the list of nominees to the affected Indian tribes is worth further consideration and intends to consult further with the tribes regarding a process by which all of the affected Indian tribes might have an opportunity to comment on the list of nominees. NMFS notes, however, that the tribes have the ability to consult among themselves primarily through the Inter-Tribal fish commissions (Northwest Indian Fish Commission and CRITFC) at the time that nominations are initially solicited. Thus, the tribes from each area initially could coordinate the nomination of a single individual without the need for coordination through NMFS. While NMFS believes this is a suggestion worth exploring for the long term, its consideration should not hold up the promulgation of a final

rule governing the appointment for the upcoming term while NMFS further explores this proposal. Consequently, NMFS is adopting the process as proposed in the proposed rule but will formally consult with each Indian tribe with federally recognized fishing rights, from which nominations were initially solicited, regarding the consultation process proposed by the Quileute and CRITFC. If, after consultation with all of the tribes, NMFS determines that a different process should be adopted for the future, NMFS will amend this regulation. Regardless of what process is selected for consulting with the tribes, NMFS cannot adopt a rule whereby the Secretary would be bound by a vote among the tribes, as suggested by the Quileute comments. Such a rule would eliminate the Secretary's discretion in making appointments and the Secretary's ability to take into account the statutory criteria discussed above in response to comment 2. The Secretary will, however, take into account the breadth of support from other tribes when selecting the tribal Council member.

*Comment 4:* The Quileute, the Hoh, and CRITFC all suggested that the regulations should provide for regional ''alternates'' or ''designees.'' The designees would be allowed to occupy the Council seat and vote on matters primarily affecting the region that they represent. The Quinault agreed this was a good idea, but acknowledged the statute probably does not permit this.

*Response:* The Magnuson-Stevens Act includes as voting members of Council the state director or designee and the NMFS Regional Director or designee. For all other council members, the statute does not authorize voting by designees. Without statutory authorization NMFS cannot provide the ability for ''designees'' to vote.

*Comment 5:* The Quileute Tribe commented that prior service by a tribal member who has served three consecutive terms on the Council, in a position where the tribal member was nominated by a State Governor to fill one of the State Council seats, should disqualify the individual for appointment to the Tribal Council seat. The Quinault Indian Nation commented that the three-term prohibition applies to three terms in the same Council seat and that the proposed rule correctly interprets the SFA.

Response: NMFS agrees with the Quinault Indian Nation comment. In the proposed rule NMFS states that prior service will not disqualify a nominee proposed by a tribal government from serving in the newly-created tribal seat. Thus, the three-term consecutive limit prohibition applies to service time in the new Council seat that Congress established specifically to represent tribal governments. Prior service in a state governor-nominated Council seat does not disqualify a tribal government's nominee for the newly established tribal Council seat.

## Classification

Since this rule is procedural or interpretative in its entirety, under 5 U.S.C. 553(d) it is not subject to a 30-day delay in effectiveness date.

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

Because prior notice and opportunity for public comment is not required for this rule by 5 U.S.C. 553 or by any other law, under 5 U.S.C. 603(a) and 604(a) this rule is not subject to the analytical requirements of the Regulatory Flexibility Act.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The reporting burden for Indian tribal government nominations for the Council appointments is estimated to average 120 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the PRA, unless that collection-of-information displays a currently valid OMB control number. The collection of this information has been approved by the OMB under Control Number 0648–0314. Send comments on the collection of information aspects of this rule to the NMFS Northwest or Southwest Regional Administrators (see **ADDRESSES**) or to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

## List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Intergovernmental relations.

Dated: September 4, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

## PART 600—MAGNUSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.215, the introductory text is removed, paragraphs (a) through (g) are redesignated as paragraphs (a)(1) through (a)(7) respectively, paragraphs (c)(1) through (c)(6) are redesignated as paragraphs (a)(3)(i) through (a)(3)(vi) respectively, paragraphs (f)(1) and (f)(2) are redesignated (a)(6)(i) and (a)(6)(ii) respectively, paragraphs (g)(1) through (g)(6) are redesignated (a)(7)(i) through (a)(7)(vi) respectively, and paragraphs (a) introductory text and (b) are added to read as follows:

### § 600.215 Appointments.

(a) *Members appointed from Governors' lists.* This paragraph applies to council members selected by the Secretary from lists submitted by Governors pursuant to section 302(b)(2)(C) of the Magnuson-Stevens Act.

* * * * *

(b) *Tribal Member.* This paragraph applies to the selection of the Pacific Fishery Management Council's tribal member as required by section 302(b)(5) of the Magnuson-Stevens Act.

(1) The Secretary shall appoint to the Pacific Fishery Management Council one representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than three individuals submitted by the tribal Governments.

(2) The Secretary shall solicit nominations of individuals for the list referred to in paragraph (b)(1) of this section only from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The Secretary will consult with the Bureau of Indian Affairs, Department of the Interior, to determine which Indian tribes may submit nominations.

(3) To assist in assessing the qualifications of each nominee, each tribal government must furnish to the NMFS Office of Sustainable Fisheries a current resume, or equivalent, describing the nominee's qualifications with emphasis on knowledge and experience related to the fishery resources affected by recommendations of the Pacific Council. Prior service on the Council in a different capacity will not disqualify nominees proposed by tribal governments.

(4) Nominations must be provided to NMFS by March 15 of the year in which

the term of the current tribal member expires.

(5) The Secretary shall rotate the appointment among the tribes taking into consideration:

(i) The qualifications of the individuals on the list referred to in paragraph (b)(1) of this section.

(ii) The various rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised.

(iii) The geographic area in which the tribe of the representative is located.

(iv) No tribal representative shall serve more than three consecutive terms in the Indian tribal seat.

(6) Any vacancy occurring prior to the expiration of any term shall be filled in the same manner as described above except that the Secretary may use the list referred to in paragraph (b)(1) of this section from which the vacating member was chosen.

* * * * *

[FR Doc. 97–23940 Filed 9–5–97; 10:40 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket Number; 970903221–7221–01; I.D. 081297C]**

**RIN 0648–XX89**

## Fisheries off West Coast States and in the Western Pacific; Precious Corals Fisheries; Technical Amendment

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the regulations implementing the Fishery Management Plan for Precious Corals Fisheries of the Western Pacific Region (FMP) which were published in the **Federal Register** on July 2, 1996. This amendment corrects the coordinates for the location of the Makapuu bed of precious corals appearing under the category of ''Established beds'' in the definition of ''Precious coral permit area''.

**DATES:** Effective September 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, 562–980–4034; or Alvin Katekaru, 808–973–2985.

**SUPPLEMENTARY INFORMATION:** In the original FMP the coordinates for the center of the Makapuu bed contained a typographical error. Instead of the longitude being listed as 157° 32.5' W. it was incorrectly listed as 157° 35.5' W. longitude. This error placed the location of the bed approximately three miles away from its actual location.

There has been almost no fishing under the FMP since its implementation, and this error was only recently discovered. This technical amendment corrects the regulations implementing the FMP (August 30, 1983, 48 FR 3923; consolidated by July 2, 1996, 61 FR 34570) to list the coordinates for the center of the Makapuu bed.

### Classification

The Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(b)(B) finds that providing prior notice and an opportunity for public comment on this rule is unnecessary, because the rule merely corrects coordinates for the location of a resource, and such notice and opportunity for comment would serve no useful purpose. Similarly, the AA, under 5 U.S.C. 553 (d)(3) finds that delaying the effective date of the correction for 30 days is unnecessary because the location of the bed is fixed.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. This rule is exempt from review under E.O. 12866.

### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Administrative practice and procedure, American Samoa, Guam, Hawaiian Natives, Northern Mariana Islands.

Dated: September 4, 1997.

**David L. Evans,**

*Deputy Assistant Administrator for Fisheries,National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 660 is amended as follows:

## PART 660—FISHERIES OFF WEST COAST STATES AND THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.12, the category for'' *Established beds* ''under the definition of ''*Precious coral permit area*'' is corrected by revising the coordinates of the point specified therein to read ''21° 18.0' N. lat, 157° 32.5' W. long.''

[FR Doc. 97–23941 Filed 9-9-97; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 62, No. 175
Wednesday, September 10, 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.

## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 50

**RIN 3150–AF41**

## Financial Assurance Requirements for Decommissioning Nuclear Power Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations on financial assurance requirements for the decommissioning of nuclear power plants. The proposed amendments are in response to the potential deregulation of the power generating industry and respond to questions on whether current NRC regulations concerning decommissioning funds and their financial mechanisms will need to be modified. The proposed action would require power reactor licensees to report periodically on the status of their decommissioning funds and on the changes in their external trust agreements. Also, the proposed amendment would allow licensees to take credit for the earning on decommissioning trust funds.

**DATES:** Submit comments by November 24, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm, Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Richter, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6221, e-mail bjr@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

The NRC published an advance notice of proposed rulemaking (ANPR) for ''Financial Assurance Requirements for Decommissioning Nuclear Power Reactors'' on April 8, 1996 (61 FR 15427). The NRC was seeking comments on its proposal to amend 10 CFR 50.2, 50.75, and 50.82 to require that electric utility reactor licensees provide assurance that the full estimated cost of decommissioning their reactors will be available through an acceptable guarantee mechanism if the licensees are no longer subject to rate regulation by State public utility commissions (PUCs) or the Federal Energy Regulatory Commission (FERC) and do not have a guaranteed source of income. The proposed amendments would also allow licensees to assume a positive real rate of return on decommissioning funds during the safe storage period. Lastly, a periodic reporting requirement would be established.

The ANPR specifically requested comments on the above amendments and on six areas of consideration for decommissioning:

1. The timing and extent of deregulation of the electric utility industry;
2. Stranded costs;
3. Financial qualifications and decommissioning funding assurance for nuclear power plants;
4. Decommissioning funding assurance for a Federal Government licensee;
5. The status of decommissioning trust funds during the safe storage period; and
6. Reporting on the status of decommissioning funds.

In response, the NRC received 650 comments from 42 commenters, and the commenters have been classified into 4 groups. The largest group of respondents was utilities and utility groups (28 commenters), followed by public utility commissions and related organizations (9 commenters). Two public interest groups submitted comments, as did a group of 3 commenters referred to as ''other.''

The discussion of the comments received is presented by general comment area and specific questions posed within each area. The questions appear in the order as presented in the ANPR, followed by the Commission's responses.

### Discussion of Comments

*A. Timing and Extent of Electric Utility Industry Deregulation*

A.1 Likely Timetable

On the issue of the timing and extent of deregulation, most commenters addressed only the timing question. If commenters also discussed the question of extent, they generally only distinguished between deregulation of the wholesale market and deregulation of retail power sales, although timing estimates usually referred to retail deregulation. Almost half of the commenters did not take a position on the timing issue. Seven commenters stated that the timing of deregulation could not be predicted.

Several commenters stated only that they took the same position as the Nuclear Energy Institute (NEI), an organization that represents many nuclear utilities. NEI estimated that about ten years would be necessary to bring about restructuring and deregulation. A few commenters suggested that from five to ten years would be sufficient. Two commenters pointed to events in States that were scheduled to occur as early as 1998 and others predicted significant deregulation within five years or less or ''rapidly.'' Two commenters suggested that deregulation would take place slowly and require a considerable time to complete.

A.2 Restructuring or Deregulation Scenario

*Phases of Deregulation.* Several commenters stated that an initial phase of deregulation of the generation or wholesale electricity market has already begun and is likely to continue. Utilities are now preparing for deregulation by undertaking cost reductions (e.g., workforce reductions, contract renegotiations, regulatory asset reductions, operating cost reductions), strategic alliances and mergers, and expansion into unregulated venues. Five commenters expressed their belief that a

second deregulatory phase would follow and lead to the restructuring of the transmission sector and to retail competition. However, many commenters noted that significant uncertainty exists regarding the breadth, timing, and implementation of the new competitive electricity business.

The pace of deregulation, according to one commenter, will be set by Federal and State regulation. One commenter stated that competition would be phased in slowly with existing generation assets being ''kept whole'' through standard regulated rates.

*Ultimate Extent of Rate Regulation or Deregulation.* Four commenters expect that electricity prices from generators will ultimately be largely deregulated or unregulated. One commenter stated that generation of electricity will become partially deregulated, but may not be fully deregulated if reliance on market forces does not adequately ensure safe and reliable generation supplies.

Nine commenters expect that transmission rates will remain subject to Federal Energy Regulatory Commission jurisdiction. Regional power markets (RPM) and independent system operators (ISO) (discussed below) would also fall under FERC jurisdiction, according to one commenter. Ten commenters anticipate that distribution (retail) rates are likely to remain subject to State jurisdiction. One of these commenters stated that distribution rates may be regulated under a price cap or incentive-based regulation.

Retail wheeling and pool-based pricing[1] will provide market pricing at all levels, including the retail level, according to one commenter. Three commenters believe that retail wheeling will become widespread.

One commenter indicated that nuclear power plants and non-utility generators, even if released from rate regulation by States or FERC, may remain under some forms of regulation, including State and Federal siting and environmental regulation.

*Resulting Business and Industry Structure.* Although one commenter stated that NRC should abandon any attempt to anticipate market structure, other commenters suggested that the following features might characterize the industry subsequent to deregulation and restructuring:

- Functional unbundling which is the divestiture of generation, transmission, or distribution systems.
- Many, and perhaps all, transmission systems operated on a State-wide or region-wide basis. An ISO will operate the system, coordinating energy production and delivery with demand and provide a pool-based spot market price for energy. RPMs or power market exchanges (PMEs) for competitive generation will accept bids from all generators that want to participate in the market, establish the clearing price, and determine the sequence of generator dispatch. Bilateral contracts for the direct purchase of power will also be allowed.
- Different treatment for nuclear generation than for other types of utility-owned generation. Even if nuclear generation is permitted to compete in an open market, some regulatory mechanisms may remain in place to ensure that nuclear-related costs (safety, security, waste disposal, decommissioning) are recovered by some means other than the market price of power. One of these commenters stated that regulated local distribution companies would end up owning nuclear generating plants.
- Continued economic viability for nuclear generation for many years as a result of marginal costs that are quite low. Another commenter argued, however, that there is no obvious deregulated market for many or most existing nuclear power plants because of the uncertainty of the costs of decommissioning and the disposal of high-level nuclear wastes. This commenter stated that neither NRC rulemakings nor short-term passage of time will resolve these issues. A third commenter asserted that competitive pressures will lead to the early retirement of some nuclear plants.

One commenter argued that, given the changes under consideration and already under way, it is no longer credible to assume that utilities can always raise rates or otherwise recover whatever costs are needed to safely operate and decommission nuclear plants. Another commenter suggested that if the NRC chooses to proceed with a rulemaking, the rule should accommodate both nuclear units subject to traditional regulation and nuclear units in the competitive markets.

A.3 Differences in State Policies and Implications

Commenters expressed viewpoints on the likely differences in State deregulatory efforts and policies. One commenter declared that all States will ultimately undergo restructuring and deregulation in some form. Nine commenters, however, suggested that some States may reject restructuring entirely, regardless of what other States do.

Four commenters feel that States will possibly or probably be compelled by competitive forces to deregulate, particularly if neighboring States do so. One of these commenters added that States within a geographic region (where there are no physical barriers to electric transmission) are likely to migrate to a similar industry structure, either as a result of Federal legislation or market pressures. Two other commenters provided examples of market or political pressures that could affect neighboring States' decisions to deregulate.

One commenter stated that some regulators in States that already enjoy low-cost electric service appear reluctant to endorse competition because of concerns that indigenous utilities will seek to sell power to the external market where profit margins could be greater. Should market factors provide an advantage to States that foster competition (by allowing indigenous utilities to gain strength by acquiring market share), States that resist competition could put their utilities at a disadvantage. While State regulators may elect to defer the decision on competition, economic or social pressures could influence that decision.

Another commenter indicated that States implementing retail competition may face the risk that a utility in a neighboring State could obtain open access without reciprocal access being provided to in-State utilities seeking to enter the State that does not provide competition.

Three commenters remarked that reform may proceed at different speeds in different States because of local market and political pressures. One of these commenters recommended that NRC accommodate the varied pace to avoid hindering or forcing transitions.

In response to the ANPR's query regarding ''hybrid'' systems, one commenter believes that a hybrid system of regulation is likely to emerge as States deal with economic issues in a variety of ways. Another commenter stated that a hybrid system could exist for some time. A third commenter reported that, while a hybrid system could probably exist, it may not result in the least expensive electricity. Under a hybrid system, industry structure may vary from region to region. Other commenters, however, felt that a hybrid system is unlikely to prevail. They stated that a hybrid may be operationally cumbersome or even unworkable because the markets are not defined by State boundaries and

[1] Retail wheeling refers to the selling of bulk power to a retail customer by way of a third party's transmission system. Pool-based pricing is a pooling of electricity produced by various generators for resale to consumers.

because the grid is highly integrated and interdependent. One of these commenters also stated that a patchwork or hybrid system may reduce the opportunities to market some nuclear generation. Three commenters said they could not predict whether a hybrid system can exist or how one State's policies will affect its neighbors.

One commenter expressed concern that deregulation and reduced oversight at the State level may reduce the certainty that out-of-State partial owners of nuclear-facilities will collect and expend decommissioning funds.

*Response.* The above questions were posed for comment so the NRC could obtain estimates on the timing of deregulation, phases, and possible different approaches that may be used in how States would address deregulation. These comments are being grouped under one response as they all contribute to whether the Commission should proceed with a proposed rule now. While the responses to this set of questions ran the gamut of opinion on this issue, the comments have not caused the Commission to change its position that it must act now to be in a position to respond to the upcoming changes in the electric utility environment that could affect protection of public health and safety. Increased competition could result in economic pressures that affect how licensees address maintenance and safety in nuclear power plant operations, as well as the availability of adequate funds for decommissioning. The comments received and the NRC staff's independent review of deregulation activities also indicate that NRC power reactor licensees are likely to have sufficient notice of changes in their regulatory regimes so as to be able to secure necessary financial assurance for decommissioning should they no longer qualify, in whole or in part, as electric utilities. (The staff notes that most, if not all, PUCs and FERC are addressing decommissioning funding assurance in their deregulatory initiatives.) Hence, these comments reinforce the Commission's position that a rule is necessary and timely, given electric utility restructuring and the deregulation legislation being proposed or enacted in several States and by Congress.

*B. Stranded Costs*

Many commenters expressed the view that regulators are likely to allow prudently incurred stranded costs to be recovered in some manner. Many of these commenters felt this was particularly true for prudently incurred decommissioning costs. Following are viewpoints typical of these comments.

The probability is high that regulatory mechanisms will be developed to replace cost recovery procedures established through ''traditional'' regulatory procedures. These mechanisms (e.g., wire charges, non-bypassable customer fees, including securitization, exit fees) may be different from current mechanisms, but the probability of recoverability under these mechanisms is no less than it would have been under conventional regulation. The mechanism chosen, and its associated equitable allocation of cost responsibility between customers and shareholders, will be determined through the inevitable give and take of the restructuring process, if one is implemented.

FERC, in Order 888, April 24, 1996, effectively established a precedent that, for electric sales under FERC jurisdiction, there will be full recovery of all costs that were prudently incurred, based on an expectation of serving customers in the future, but have or may become stranded as a result of moving to a competitive market. Although the FERC order pertains to wholesale markets, most believe the precedent has been set and the same standard will apply to stranded costs that result from retail competition. It is reasonable to assume that legislators and generators will take distinct precautions in relation to nuclear generation. Even if nuclear plants are permitted to compete on the same basis as other baseload generation, regulatory mechanisms must be in place to ensure that certain costs (safety, security, waste disposal, and plant decommissioning) are recovered by some means other than the market price of power. Plausible mechanisms that regulators could use to recover costs include competition transition charges and non-bypassable charges. One utility fully expects that there would be 100 percent recovery of nuclear stranded costs in a restructured electric industry.

However, other commenters expressed some uncertainty. Some commenters thought cost recovery was appropriate, but did not address its likelihood. In some cases, commenters advocated specific NRC action to address the situation.

One commenter stated it is premature to speculate as to who will ultimately bear the responsibility for stranded costs (estimated between $7 and $17 billion in New Jersey alone). While FERC Order 888 addresses this issue for the wholesale market, that decision remains open to legal challenges that may affect its final outcome. Moreover, because potential retail stranded costs are orders of magnitude larger than wholesale stranded costs, a different solution to this issue for retail competition may ultimately be deemed appropriate. Where stranded costs may be determined to be recoverable, it is conceivable that those costs will be recovered through some form of non-bypassable ''wire'' charge.

The commenter further stated that it is not clear how construction costs will be treated as State PUCs define policy for restructuring. FERC and some State PUCs already have proceedings under way to determine the amount and means of stranded cost recovery. There is also the possibility of Congressional action. NRC should take a proactive position with FERC and State regulators that potential stranded costs, including those that may be related to specific decommissioning cost obligations, should be recovered by the electric utility as part of their rates. (Several other commenters also suggested that NRC should aggressively lobby FERC and/or PUCs to allow utilities to recover stranded decommissioning costs.)

One PUC does not accept that any source of electrical generation is ''non-competitive'' per se, and thus does not accept that nuclear plants are non-competitive because of high construction costs. It is premature, an oversimplification of a complex issue, and a potential disincentive to mitigate costs to label any type of generation non-competitive at this early stage in restructuring. Even if nuclear generation is sold at less than current combined fixed and variable costs, the market price will probably exceed the variable component, so there will be some recovery of fixed costs. Costs that are not recoverable could be the subject of Federal or State stranded cost proceedings. Federal and State authorities must inquire whether the unit is necessary to the continued safe and reliable operation of the interconnected grid, and if the answer is yes, a proration of the costs may be necessary among all customer classes that benefit from the continued operation of the unit. If the unit is not necessary, it should be removed from service. The individual State commissions will have to decide who should bear the cost to prematurely shut down, as opposed to decommission, an uneconomic plant.

A commenter stated that the treatment accorded stranded investment or costs may vary from jurisdiction to jurisdiction and few generalizations are possible. The NRC should not become embroiled in individual rate proceedings or debates about particular

cost recovery mechanisms, but should instead define a clear policy that, from a public health and safety perspective, licensees must be allowed to maintain an adequate financial posture to support ongoing safe operation and decommissioning. The NRC's policy statement[2] should be a strong statement of its expectations. NRC should participate in the NARUC subcommittee addressing restructuring.

Some commenters stated that decommissioning obligations are qualitatively different from other stranded costs. FERC has not yet adopted a mechanism that provides for recovery of decommissioning costs. Order 888 provides for recovery of wholesale stranded costs through the ''revenues lost'' approach. However, this approach only accounts for and allows recovery of fixed costs already incurred by utilities and does not address costs that must be collected in the future. A better solution is for the Federal Government to assure the continuing recovery of decommissioning costs in utility rates, through non-bypassable fees to be paid by utility customers leaving the system, or through other surcharges tied to the use of transmission facilities. The NRC should support cost recovery initiatives and help educate State commissions on the importance of ensuring continued full collection of decommissioning costs.

Another commenter noted that the best ultimate assurance of the collection of the cost of decommissioning is the ability of the plant to operate at sufficiently low marginal costs to collect decommissioning costs in gross margins. The NRC could improve the likelihood of this outcome by (1) encouraging the IRS to allow payments for decommissioning costs to be generally deductible rather than deductible only if they are ordered by a regulatory agency and (2) strengthening utilities' efforts to recover stranded costs. As plants are further depreciated and the cost of nonnuclear generation escalates, existing plants will become more competitive.

Some commenters asserted that in the process of identifying well-run plants and seeking the sale or closing of the not-well-run plants, the problem of who should pay for unrecovered costs must be addressed. To the extent that the nonsalability is caused by problems created by poor management, the seller is responsible. If the NRC or another agency would undertake a program to address the problem of poorly performing nuclear plants and encourage continued maintenance of efficiently operated plants, many of the questions asked by the ANPR might find answers. Timeliness in identifying poorly performing plants is critical because while the industry is reforming itself, the ability to affect the inventory of nuclear plants is at its highest level. Once plants have been evaluated, the NRC should be prepared with a task force to recommend an orderly plan for the disposition of those few plants and operators who will not be recommended for further operations.

A few commenters believed that the full burden of covering the costs, including decommissioning costs, of uneconomic nuclear plants should fall on utility shareholders rather than customers unless there is a compelling case otherwise.

*Response.* The Commission does not see a need to modify its position that its regulations need to be modified at this time to address the changing regulatory situation for power reactor licensees because of the comments received. Specifically, the Commission agrees with the commenters who hold the view that regulators are likely to allow prudently incurred stranded costs to be recovered in some manner and do not see a need to interfere in the financial regulation of nuclear power plants with respect to the question of stranded costs. Some of the comments, in which actions were proposed for the NRC's involvement with respect to stranded costs, were beyond the NRC's sphere of regulation. Examples include having the NRC identify poorly run plants, requiring the plants to be sold and for the Federal Government to be the purchaser of last resort and even run the plants if necessary.

The NRC has addressed the issue of stranded decommissioning costs elsewhere in this notice. However, the NRC is aware that stranded costs, insofar as their recovery affects a licensee's ability to obtain sufficient funds to protect public health and safety, must be addressed to ensure that they are being adequately handled. Further, States are considering a number of options for assessing non-bypassable charges to recover decommissioning costs, as well as other stranded costs. One such option is ''securitization,'' which entails financing the recovery of stranded costs through issuance of bonds whose principal and interest would be repaid by an irrevocable, non-bypassable charge set by State statute on an electric utility's distribution customers. Because the income stream to repay the bonds would be securitized by the irrevocable, non-bypassable charge, the bonds would be highly rated and would thus require a lower interest rate than riskier debt. Also, these securitized bonds would not be part of the utility's capital structure, and so would not reflect the higher cost of equity capital. The spread in interest cost between highly rated securitized debt and lower rated utility capital that includes both debt and equity makes securitization attractive to many states. The NRC believes that securitization has the potential to provide an acceptable method of decommissioning funding assurance, although other mechanisms that involve non-bypassable charges provide comparable levels of assurance and should not be excluded from consideration by State authorities.

As stated in the NRC's ''Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry'' September 23, 1996 (61 FR 49711): ''Notwithstanding the primary role of economic regulators in rate matters, the NRC has authority under the Atomic Energy Act of 1954, as amended, (AEA) to take actions that may affect a licensee's financial situation when these actions are warranted to protect public health and safety.'' The policy also goes on to explain that the NRC will work and consult more closely in the future with the National Association of Regulatory Utility Commissioners (NARUC), FERC, and the Securities and Exchange Commission (SEC) so that the NRC may express its positions on safety and encourage the various regulatory bodies to continue their allowances of adequate expenditures for plant safety. Lastly, the proposed reporting requirements of this rulemaking are seen by the NRC as a vehicle for the Commission to monitor this potential concern.

## C. Nuclear Financial Qualifications and Decommissioning Funding Assurance

### C.1 Funding Assurance if Plants Shut Down Prematurely

Most commenters accepted the premise of the question, whether costs of a shortfall in decommissioning funding of a prematurely shut down plant could be passed along to ratepayers. This conclusion was based in part on past experience and in part on a belief that State PUCs will develop methods to ensure that decommissioning costs are covered. Several commenters said that recovery from ratepayers or shareholders would depend on the plant management's responsibility for the premature shutdown. If management were deemed responsible, efforts would be made to have the shareholders pay for

[2] See Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, (61 FR 49711; September 23, 1996).

decommissioning; but if the management were not deemed responsible, State PUCs would find methods to have the ratepayers provide the funds. Commenters noted that, in the past, decommissioning costs had been recovered for prematurely closed reactors (e.g., Dresden 1, Fort St. Vrain, San Onofre Unit 1, Trojan, Yankee Rowe). In a transition from full regulation to full competition, one commenter suggested a window to allow continued or possibly accelerated recovery. Another commenter said that a surcharge might be placed on customers. Under competition, recovery could be made through other revenue streams of the licensee, a non-bypassable fee, or debt or equity of the licensee. Two other commenters suggested that transmission charges would be the most likely source of funding. Retained earnings of the utility were suggested as a source of funds. Two commenters expected shareholders to be responsible for providing decommissioning funds in cases of premature shutdown.

Two commenters, including one PUC, conceded that PUCs might not have jurisdiction to require funding from ratepayers. Under such circumstances, one PUC stated, funding of decommissioning would be greatly dependent on the financial viability of the regulated firm. The risk of recovery would rest squarely on its shareholders. If the shareholders could not pay, the liability would then transfer to taxpayers. For this reason, the commenter suggested, decommissioning might be accorded special treatment.

One commenter argued that the solution to premature shutdown was for NRC to require assurance for decommissioning costs prior to approving reorganizations or license transfers. Potential funding shortfalls should be addressed, another argued, on a case-by-case basis, and might be avoided by sale of the nuclear plant to an entity better able to manage it effectively. Two others suggested that a proper funding mechanism would have to be identified and put into place at shutdown, without further specifying what that mechanism could be. In the opinion of one of these commenters, such funding could be a difficult problem because currently, on an aggregate basis, utilities' decommissioning costs are only about 25 percent funded (about $9 billion out of $35 billion), although plants are at about 43 percent of their aggregate service lives. Early underfunding could force high back-end funding, making the plants uncompetitive.

A commenter stated that, contrary to the planned 40-year operating life of nuclear power plants, material and operating evidence suggests plants' operating lives are closer to 15–25 years. Hence, the plan to recoup decommissioning costs of over a 40-year operating life may be unrealistic.

NEI took the position that the source of funds to shut down a plant prematurely would be different from company to company and would have to come from other ongoing revenue streams of the company or from alternative sources such as transmission or distribution charges, exit fees charged customers leaving the system, or other regulatory charges. NEI also supported NRC requirements for financial assurance, such as those currently found in 10 CFR 50.75. Five commenters stated that they explicitly adopted the NEI position.

*Response.* The Commission recognizes the importance of decommissioning funding assurance for prematurely shutdown plants and believes that its current case-specific approach, outlined in § 50.82, strikes the best balance between level of assurance and cost. The alternative of requiring accelerated funding for all plants over a defined period, to cover the possibility of premature shutdown at some plants, would be too arbitrary and would lead to wide variations in impacts on licensees. Accelerated funding results in the inequitable inter-generational problem of the present generation paying for the decommissioning costs, while the future generation may receive the benefits of future electricity generation without incurring the costs of decommissioning. Although the Commission is not proposing to expressly require accelerated funding to address premature shutdowns, to the extent that licensees no longer qualify, in whole or in part, as electric utilities, they will, in effect, have to ''accelerate'' funding by getting ''up-front'' forms of financial assurance. The staff expects, however, that PUCs and FERC will address decommissioning funding through cost recovery mechanisms. The Commission is aware that some plants have not operated for the full 40 years. However, it is likely that some plants will continue operating for the full 40 years and beyond. Therefore, the Commission does not believe any change is required for the planned 40-year life.

C.2 When Does an Operator Cease To Be a Utility

On the question of when an operator of a nuclear power plant ceases to be a ''utility'' as defined in 10 CFR 50.2, seven commenters interpreted the definition strictly and concluded that, if an operator ceases to satisfy the terms of the definition, the operator is no longer a ''utility.'' Several commenters used almost the same formula: an operator would cease to be a ''utility'' when it ceases to provide service to retail or wholesale customers at rates set by a separate regulatory authority. One commenter supported a clarification of NRC's regulations that would establish its continued ability to require the proper accumulation of decommissioning funds, while two argued that the NRC should relax its definition to cover entities that purchase electricity and recover the costs from rates charged customers or from other revenue guarantees. Another commenter argued that NRC should seek additional assurance in advance of deregulation.

NEI stated the contrary argument, noting that it is not apparent that any licensee will fall outside the definition of ''utility'' in the near future, even after restructuring. NEI argued that as long as a licensee has adequate cost-recovery mechanisms under the authority of State or Federal regulations, it should continue to be considered a utility.

Other commenters argued that even after deregulation the price charged for electricity will be established by the regulatory process or in other ways that will mean a nuclear plant will continue to be an ''electric utility.'' One stated that the term ''electric utility'' should be construed to include all entities that have been authorized by a State PUC, FERC, or other governing entity to recover decommissioning costs from customers. Two commenters expected plants to remain subject to State PUC jurisdiction, and therefore to satisfy the regulatory definition. Another argued that if a portion of a vertically integrated company is subject to cost recovery pricing, the definition is satisfied. Two said that if a plant sets its own rates for electricity, the definition is satisfied.

One commenter rejected the NRC's emphasis on an operator's satisfying the definition of utility, and argued that the emphasis should be on the financial viability of the entity responsible for decommissioning the unit.

*Response.* Consistent with the position taken in the ANPR, the NRC is proposing to revise its definition of ''electric utility'' to introduce additional flexibility to address potential impacts of electric industry deregulation. The Commission notes that the key component of the revised definition is a licensee's rates being established either through cost-of-service mechanisms or through other non-bypassable charge mechanisms, such as wire charges, non-

bypassable customer fees, including securitization or exit fees, by a rate-regulating authority. Several States are considering deregulation of future operations of nuclear power plants so that revenues will not be determined by cost-of-service but by market-set prices. Should a licensee be under the jurisdiction of a rate-regulating authority for only a portion of the licensee's cost of operation, covering only a corresponding portion of the decommissioning costs that are recoverable by rates set by a rate-regulating authority, the licensee will be considered to be an ''electric utility'' only for that part of the Commission's regulations to which those portions of costs pertain. For example, if a licensee were able to collect 40 percent of its decommissioning costs through rate-regulated activities, such as traditional cost of service regulation or use of non-bypassable charges, the remaining 60 percent of the costs would need to be accounted for in a manner consistent with methods acceptable for a licensee other than an electric utility. In this proposed rule, the definitions of several relevant terms are also provided for the first time in § 50.2. It is noted that some commenters misinterpreted the intent of the existing definition of ''electric utility'' with respect to entities that establish rates themselves. As stated in the proposed definition, those entities include only public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies. Therefore, the proposed definition is being proffered as clarification and to show the continued importance the NRC places on the role of regulatory authorities in the setting of electric utilities' rates with respect to the collection of funds for decommissioning and other costs. This is consistent with the NRC's draft policy statement.

C.3 Assurance Options

The following topics were discussed by commenters in response to the ANPR's questions relating to the options to be considered if an electric utility found itself operating a reactor that was no longer regulated by a rate-setting State or Federal body.

*Full Up-Front Assurance.* Most commenters opposed requiring all nuclear plants to provide full up-front assurance, often arguing that it is unnecessary or that it is overly burdensome to nuclear plant owners. Many commenters reminded NRC that deregulation does not inherently mean a total lack of regulation or a lack of cost recovery. One commenter believed NRC should, at the time of restructuring, require only an assurance level commensurate with the completed percentage of the operating life of the plant. One commenter opposes advance funding on the grounds that doing so would incorrectly view all properly executed reorganizations as resulting in successor operators being unqualified to ensure decommissioning compliance.

One commenter believes that assurance should be provided before licensees are exposed to the full pressures of competition (3–5 years). Two commenters supported the idea of requiring assurance prior to NRC's approval of reorganizations that transfer control of a nuclear plant.

Many commenters favor requiring reasonable financial assurance for entities that cease to be rate-regulated utilities. Many of these commenters, and others, view NRC's current regulations as basically adequate to address these situations, although the regulations might expand upon the allowable methods of assurance.

*Additional Financial Assurance Methods.* Additional financial assurance methods suggested include continued rate-regulating entity determinations, an appropriate charge for decommissioning in contracts for the plant's output or in the transmission or distribution charges of the licensee or its affiliate if the charges are assigned to the licensee or its decommissioning fund, and exit fees charged against customers leaving the system. A few commenters would include any insurance for premature decommissioning caused by an accident. One commenter would allow utilities to establish any method that may be developed, including methods requiring approval of PUCs or FERC. Two others would allow assurance through a plan for gradually recovering decommissioning funds via rates and prices, even for deregulated entities. Others argued that NRC should offer the utilities flexibility and that each situation should be assessed on a case-by-case basis if and when it occurs.

*Timing of Rulemaking.* With regard to the timing of the rulemaking, a few commenters support prompt NRC regulatory action to ensure that adequate financial assurance is in place prior to restructuring, before waiting further to learn exactly how the industry will develop. Several other commenters, however, believe that rulemaking is premature until more is known about restructuring. Several commenters suggested that NRC already has the authority to approve or disapprove any transfer of license related to a merger or reorganization. Two commenters stated that NRC should evaluate the regulations only after further studies that (1) identify those nuclear plants that are not likely to survive the imposition of competitive forces (i.e., those plants that are not run efficiently or that cannot be made to run well), or (2) develop quantitative measures for assessing the adequacy of decommissioning funds and rates of accrual. New rules, according to one commenter, should be timed to enable utilities to take advantage of stranded cost recovery.

*Added Assurances for Safe Operation and Decommissioning.* Many commenters voiced opposition to the ANPR's query regarding whether the NRC should require additional assurance for adequate funds for safe operation and decommissioning in anticipation of deregulation. One commenter argued that additional assurances in this area may not add to or strengthen the obligation already imposed by the terms and conditions of the license. Others reasoned it unnecessary, given other existing NRC requirements and FERC's framework for recovery of stranded costs, including decommissioning.

Only one commenter supported additional assurance for safe operation and decommissioning in anticipation of deregulation.

*Joint Liability.*[3] In response to the ANPR's query regarding newly created organizations or holding companies being held jointly liable for decommissioning costs, four commenters supported the idea because of the added assurance it would provide. Three commenters would consider requiring joint liability on a pro rata basis, possibly taking into account the remaining years of licensed life. One commenter cautioned that jointly liable parties may disagree on decommissioning methods (e.g., prompt vs. deferred) because of the cash flow implications.

Numerous other commenters opposed the idea of joint liability, arguing that it was unnecessary, would inhibit flexibility, would weaken competitive position, or would undermine the separate corporate identity or the responsibility of the individual entities. Some of these commenters suggested that joint liability could be acceptable if it were an optional method of financial assurance.

One commenter stated that new owners and operators should have to assume the responsibilities and

[3] The concept of joint liability is defined in Black's Law Dictionary (4th Ed.) as:

One wherein joint obligor has right to insist that co-obligor be joined as a codefendant with him, that is, that they be sued jointly.

liabilities of the previous owners and operators. Another stated that the financial assurance obligation should follow the owners and operators, whether regulated or unregulated, who have incentives to properly manage and operate the units.

*Impacts.* Many commenters claimed that requiring full up-front assurance would be overly burdensome to nuclear plant owners. Others argued that additional assurances could inhibit competitiveness relative to nonnuclear facilities, impede reorganization, aggravate potential stranded investment, or create additional problems for utilities, ratepayers, or taxpayers at a time when competitive forces are already causing economic concerns. Examples of such problems would include the difficulty for affiliated businesses to raise capital, or the need for affiliated entities to charge more for its services reducing its competitive position in the industry. Some commenters argued these effects could reduce the likelihood that decommissioning will be fully funded or could increase the likelihood of premature shutdown.

*Response.* The Commission is addressing most of these comments by revising the definition of ''electric utility'' and by instituting a reporting requirement. As to the issue of requiring full up-front funding in advance of deregulation, the Commission agrees with the commenters that such a requirement would be overly burdensome if applied to all licensees. However, given the proposed change to the definition of ''electric utility'' in this action, any licensee no longer overseen by a rate-setting regulatory authority, i.e., a licensee other than an electric utility, would need to comply with the decommissioning funding assurance requirements of § 50.75(e)(2) unless that licensee can otherwise conclusively demonstrate a government-mandated, guaranteed revenue stream for all unfunded decommissioning obligations. The options contained in that section include prepayment; an external sinking fund coupled with a surety method or insurance for any unfunded balance; or a surety method, insurance, or other guarantee method.

The Commission emphasizes that the changes to the definition of ''electric utility'' introduce additional flexibility to address deregulatory developments. Thus, the NRC would expect licensees to be more likely to continue to qualify, in whole or in part, as electric utilities under the revised definition. Although licensees who no longer qualify, in whole or in part, as electric utilities could encounter difficulties in securing alternative decommissioning funding, experience to date indicates that PUCs and FERC are addressing decommissioning costs through various recovery mechanisms.

The timing of the rulemaking was addressed in the response to comments in section A of this notice. Any additional rulemaking in this area would result from experience gained from industry and regulatory actions. As several of the commenters stated, the NRC has the authority to approve or disapprove any transfer of license related to a merger or reorganization. Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80 provide that control over a license may not be transferred, directly or indirectly, unless the Commission consents to such transfer in writing.

The regulations do not explicitly impose joint liability on co-owners and co-licensees. As stated by some commenters, joint liability may create problems with respect to potential disagreement on decommissioning methods, the inhibition of flexibility, the weakening of competitive position, and the difficulty in implementation. Also, as some noted, joint liability may not be needed. The new owners and operators should assume the obligation to safely operate the facility and assure adequate funding for decommissioning, as they have the incentives to properly manage and operate the units. More importantly, however, is the fact that with the proposed modified definition of ''electric utility,'' restructured entities would either have to have adequate coverage of decommissioning funding obligations through some non-bypassable cost recovery mechanism or would be required to provide the types of up-front assurance described in § 50.75(e)(2). Those licensees who remain utilities would have the funding assurance provided through being rate-regulated under § 50.75(e)(3). The Commission considers this level of assurance to be adequate and therefore sees no need to impose an additional regulatory obligation of joint liability on co-owners or co-licensees.

Lastly, with respect to the question of impacts, the Commission has considered the comments relating to potential impacts in arriving at the positions taken. The Commission understands that financial assurance would place a burden on licensees that may affect their competitiveness in a deregulated environment. The Commission has chosen to take an approach that would create no additional financial impact over present regulations for electric utilities and has also expanded the definition of electric utility to accommodate types of rate regulation not previously anticipated. There are also sufficient existing options to demonstrate financial assurance for non-electric utilities. Entities without adequate financial capital may find it difficult to both finance up-front decommissioning funding and operate a nuclear power plant safely. These newly formed companies may not be good candidates for nuclear power plant ownership.

C.4 Financial Test Qualifications

About half the commenters flatly opposed requiring licensees to demonstrate financial assurance by satisfying minimum standards of net worth, cash flow, or other financial measures.

Many of the commenters, including NEI and four commenters who adopted the NEI position, argued that such a test was not necessary or appropriate. If NRC is concerned about the financial condition of a particular licensee, three commenters said, an individualized case-by-case review would be more appropriate. Some commenters said that financial measures appropriate for investor-owned utilities would not be useful for cooperatives, or for utilities that do not have parent companies. Because generation and transmission companies typically are highly leveraged, with many of their assets in the nuclear generating facility, they cannot meet a test with a tangible net worth requirement of ten times the current decommissioning costs, but this does not mean that they cannot satisfy their financial obligations. A non-bypassable charge was suggested as an alternative.

Some commenters suggested that NRC should adopt more than one alternative test, none of which would be mandatory. Any alternative adopted should be consistent among owners, and should not discriminate against one class of owners, and should not be applied as a static one-time requirement. Other suggestions included a requirement that a firm demonstrate that it had ''ample margins, subsequent to restructuring'' to cover funding contributions or to cover decommissioning costs in the event of a premature shutdown. Another suggested disclosure standards, developed through the Financial Accounting Standards Board, for use in annual reports and 10–K filings, that would be reviewed by Federal regulators. Still another argued that measures of market value and cash flow, rather than net worth, were appropriate in a competitive environment, and that the ratio of available cash and cash equivalents to

unfunded decommissioning requirements would be the best measure of ability to support decommissioning, along with an assessment of the utility's competitive situation. Determining whether a utility had minimum cash flow sufficient to maintain its plants in a non-operating, interim stage prior to decommissioning, and the period of time the utility could sustain such cash flows, was suggested by one commenter.

One commenter suggested using a financial test as an indicator, from which a Federal agency could determine that the utility needed assurance of continued rate recovery of the decommissioning obligation.

Only two commenters endorsed a test of financial stability as a financial test qualification. One pointed to assets sufficient to fund an immediate decommissioning, or a minimum level of financial stability (measured through investment grade securities) or insurance, or a surety to cover decommissioning costs as three potentially acceptable mechanisms. The other approved of parent or self-guarantees, but noted that generators with nuclear facilities might have difficulty meeting the financial test criteria, including the investment grade bond rating requirement.

*Response.* With the proposed revision of the definition of ''electric utility,'' licensees who no longer meet the new definition will need to comply with the requirements of § 50.75(e)(2), which describes the acceptable methods of financial assurance for decommissioning for a licensee other than an electric utility. These methods are flexible and contain at least four major categories of acceptable methods to ensure funding for decommissioning as identified in the previous response. Few commenters offered insights on other potential test qualifications, although several stated that the financial structure of utilities means that meeting the criteria in 10 CFR Part 30 could be problematic. The NRC would need to conduct additional research and analysis to determine which additional financial measures would be most useful and appropriate if a financial test requirement for parent or self-guarantee were pursued. Criteria could be identified and thresholds developed, but evolution of the industry might mean that the criteria would become outdated and misleading relatively quickly. Hence, the Commission will continue to evaluate this issue, but is not presently offering any changes to its financial test criteria.

C.5 PUC/FERC Certification

Only two commenters gave unequivocal support to the idea of requiring PUC/FERC certification. One encouraged NRC to undertake direct dialogue on certifications with the appropriate PUCs and FERC; the other stated that PUCs and FERC must undertake such certifications and that NRC should impress upon them the importance of doing so. A few PUCs, in the opinion of this commenter, such as California and New York, had already recognized the need to provide this assurance during restructuring. Two other commenters expressed optimism that State regulators would resolve the decommissioning funding problem in the transition to competition, with or without certification, but one went on to say that certification would probably be unnecessary. Of these, six adopted the NEI position, which was that without new Federal legislation it would be difficult to require legally binding certification from PUCs or FERC. Requiring a licensee to obtain such certification would place it in noncompliance, with no way of achieving compliance. If a licensee did obtain certification, however, NEI suggested that it be allowed to satisfy the financial assurance requirements using that mechanism.

Two commenters opposed to certification argued that it would be counter-productive because the utility would have no incentive to maintain adequate decommissioning funds. NARUC and several PUCs either opposed the idea or expressed strong reservations about it. NARUC noted first that no current commission can bind a future commission at either the Federal or State level. However, NARUC was confident that State PUCs would examine the causes of underfunding, if it occurred, and seek remedies. A PUC stated that it might not have the authority to certify that nuclear plant licensees under its jurisdiction would be allowed to collect decommissioning funds through rates after restructuring, and another PUC similarly stated that it could not give a blanket guarantee that all licensees would be allowed to collect revenues to complete decommissioning funding. A third PUC stated that no current commission could legally bind a future commission, so it could not identify an effective form of certification. Another PUC also expressed doubt about how certification would change current procedures, in which PUCs can adjust rates based on the cause for and the prudence of the underfunding. A different PUC noted that, in the past, ratemaking authorities had allowed recovery and expected them to act in the future in the same way, but could not be certain that they would issue certifications. Another PUC stated that it already has and would maintain authority to ensure that utilities collect sufficient funds for decommissioning. One commenter pointed out that FERC has jurisdiction only over rates for wholesale sales of power. Over 80 percent of decommissioning costs are recovered through rates for retail power sales, over which PUCs have jurisdiction. Relying on State regulators would be particularly problematic for multi-State utilities. Another commenter stated that within five years the issue would become moot and certification would become impractical because of competition and evolving antitrust law. A public interest group had questions about whether PUCs and FERC could certify, but in any case thought NRC should concentrate instead on the licensees. Another commenter noted that since a significant portion of nuclear licensees' business are not FERC-regulated, FERC certification would have no relevance to them.

One commenter suggested procedures through which NRC could interact with State PUCs and FERC; the NRC could determine that a utility's rate of recovery for decommissioning was insufficient, and that determination could be the basis of an action by a PUC to modify the rates.

The final set of commenters argued that the question of certification was one that the PUCs and FERC should determine.

*Response.* The Commission does not plan to implement certification by the State PUC's or FERC because of the reasons given in many of the comments outlined above. Although ''certification'' initially appeared to the NRC to be an option meriting further consideration, since experience to date has indicated that PUCs and FERC are addressing decommissioning funding assurance through more viable mechanisms, the NRC is not pursuing this option further.

C.6 Impact of Accelerated Funding

Only a small number of commenters supported the idea of accelerating funding of decommissioning costs. Two expressed general support. Two provided quantitative analyses that suggested that the impact of accelerated funding would not create a large financial burden on either licensees or ratepayers. The Public Utility Commission of Texas reported analysis for three Texas plants that suggested that, for a ten-year recovery period, electric base rates would need to be

increased by about 0.5 percent and the fund earnings would be increased by about 50 percent. For a five-year recovery period, rates would increase by about 1 percent; total life-of-facility contributions by customers would be decreased by about 55 percent. In addition to arguments that the burden would not be great, another argument made in support of accelerated funding was that, after funding was completed, the licensees who had paid up their decommissioning funds would be in a better competitive position. Commenters also argued that earnings from the accelerated funding, because they would have a longer time to earn interest, would grow substantially and provide a gain to the licensees that they would not otherwise obtain.

Licensees both supporting and opposing accelerated funding noted that unless the Internal Revenue Service changed its rule on the deductibility of payments into the decommissioning trust fund, the accelerated payments would not be deductible. The NRC was urged to encourage the IRS to change the rule.

Almost three-quarters of the commenters opposed accelerated funding of decommissioning. Their arguments against the idea stressed (1) that it would adversely impact the competitive situation of nuclear licensees and (2) that it would be inequitable because the amount that each plant would have to supply in an accelerated payment would depend on the age of the plant and the amount it had previously paid in the its decommissioning fund. The financial marketplace, rather than regulation, should determine the speed with which funding is provided. Accelerated funding, in the view of some commenters, could not be accomplished through rate increases and would have to be paid by licensees' stockholders. One commenter argued that utility shareholders should bear the burden of decommissioning costs, but would not do so under accelerated funding. Other commenters argued that accelerated funding would shift the costs of decommissioning onto current ratepayers from future ratepayers. Commenters believed accelerated funding would lead to cash flow problems for licensees and could result in increased borrowing to cover cash outlays. Accelerated funding could lead to the shutdown of marginal facilities, which would be contrary to the intent of the policy and lead to additional shortfalls of decommissioning funding. One commenter argued that the amount of decommissioning funding that will ultimately be required is too uncertain to be collected through accelerated funding.

*Response.* The Commission continues to be concerned with the availability and efficacy of financial assurance mechanisms for decommissioning for those licensees whose rate regulatory oversight by FERC or the State PUC's is substantially reduced or eliminated. Under the NRC's current regulations (and as proposed to be modified in this rule), licensees who no longer meet the definition of ''electric utility'' may use financial assurance mechanisms for decommissioning as defined in 10 CFR 50.75(e)(2), including (i) prepayment; (ii) an external sinking fund coupled with a surety method or insurance; (iii) a surety method, insurance, or other guarantee method, including parent company guarantees and self guarantees coupled with financial tests; and (iv), in the case of Federal, State, or local licensees, a statement of intent.

The Commission is concerned that these financial assurance mechanisms may not be available to some licensees and is thus asking for additional comment on alternative methods of financial assurance that would provide assurance equivalent to that already provided under the Commission's regulations. For example, in the advance notice of proposed rulemaking, the Commission raised the issue of whether requiring the acceleration of decommissioning funding over a shorter period of time (e.g., 10 years) than the period of the operating license would provide an equivalent level of assurance to current allowed mechanisms. As discussed above, most commenters stated their opposition to accelerated decommissioning funding. However, this opposition appeared to be predicated on the assumption that the NRC would require accelerated funding for all power reactor licensees, and not only those who no longer met the definition of ''electric utility.'' Thus, the Commission is asking for additional comments on whether this, or some other equivalent assurance mechanism, should receive additional consideration in this rulemaking for those entities which would not be classified as ''electric utilities.''

C.7 Potential Shortfalls From Underestimates of Costs

Commenters suggested a range of responses to decommissioning shortfalls occurring as many as 50 years into the future, after a period of safe storage. None, however, clearly identified a source of funding to make up the shortfall.

NEI and eight additional commenters argued that there is a reasonable probability that future cost estimates could decrease rather than increase because of several factors, including accumulated industry experience, application of new technologies, and reductions in the ultimate disposal volumes of decommissioning wastes. They also suggested that periodic re-estimates of decommissioning costs and adjustments to the rate of collection to reflect these re-estimates, both during operation and in the post-operation phase, could resolve the problem.

Several other commenters emphasized solutions that involved cost estimates. One PUC suggested that the NRC should allow utilities to use State-required facility-specific cost estimates if they were higher than NRC estimates. Two others suggested that NRC should review cost estimates every five years, with more frequent reviews as license termination approaches. The Utility Decommissioning Group predicted that shortfalls would be unlikely to arise suddenly or to be drastic. Two utilities also suggested that periodic reviews of cost estimates, coupled with increased collections as necessary, would remedy underfunding. Two other commenters made only the general statement that current procedures would be adequate, and any shortfalls should be handled through appropriate funding mechanisms.

Some commenters recognized that the problem of underfunding arising after the safe storage period could be serious. One public interest group did not suggest any remedy, stating only that NRC could be virtually certain that the funds accumulated for decommissioning would be insufficient. A utility suggested that the only solution would be to delay decommissioning activities to allow the decommissioning fund to accumulate additional earnings and to modify the decommissioning plans to reduce cash flow needs. Another suggestion was that NRC could require every licensee to adopt an investment strategy that would ensure that the decommissioning fund earned at least the rate of inflation measured by the consumer price index (CPI), and that NRC could require the utility to place additional money into the fund if necessary.

Several commenters recommended approaches to the problem that involved PUCs. Two suggested that underfunding would be remedied by application to the PUC. One suggested such PUC involvement would occur after the shortfall was identified, the other suggested that PUCs would take potential shortfalls into account prior to utility restructuring and that the shortfall would not occur until after

several years of competition. This commenter suggested that a wires charge could be used to ensure that such shortfalls did not occur. Three commenters said that NRC should intervene with State PUCs to ensure that shortfalls do not occur, either immediately or when the underfunding was recognized. A few commenters argued that the causes of the shortfall should be identified. If the plant's management was responsible, the additional decommissioning costs should be recovered from stockholders. NRC could require additional contributions if the invested decommissioning funds are insufficient. Alternatively, if the utility management is not responsible, customers should bear the additional cost. However, as one PUC noted, underestimates that are not identified until far into the future could become a social problem. If the underestimate is not identified until after the plant is removed from service, no ratepayers will be required to provide additional funding. If the company still exists and is solvent, shareholders may be held accountable, but only to the point of insolvency. Gross underestimates could very well bankrupt the company and place a significant burden on regulators and legislators to step in to fund completion of the decommissioning.

None of the commenters recommended increasing contingency factors to provide for potential shortfalls far in the future. Several argued that contingency factors are intended to address ''unforeseeable cost elements'' or that contingencies are inappropriate for some other reason. The size of such contingencies would be too arbitrary. In addition, some State PUCs would not apply larger contingencies, particularly since the current cost estimates already contain a significant contingency factor. Finally, one commenter argued that larger contingencies would lead to over-collection and distortion of prices for electricity. Seven commenters joined NEI in taking a position against the use of contingencies to address the problem of potential shortfalls occurring far in the future.

*Response.* The Commission sees its proposed reporting requirement as a way to keep informed of licensees' decommissioning funding status and potential underestimates of cost. However, the Commission has undertaken a study to analyze the actual costs incurred by the power reactor licensees that are in the process of decommissioning, and the Commission will act accordingly after studying those results. Further, the Commission has the authority to require power reactor licensees to submit their current financial assurance mechanisms for NRC review, revision as necessary, and approval. The Commission reserves the right to take the following steps in order to assure a licensee's adequate accumulation of decommissioning funds: review, as needed, the rate of accumulation of decommissioning funds; and either independently or in cooperation with either the FERC and the State PUC's, take additional actions as appropriate on a case-by-case basis, including modification of a licensee's schedule for accumulation of decommissioning funds.

C.8 Captive Insurance Pool

The idea of setting up a captive insurance pool to pay unfunded decommissioning costs did not obtain strong support. A few commenters endorsed it, with qualifications. One said that, in fact, the mechanism would more nearly resemble a mutual insurance pool, and listed a number of factors, including the size of premiums, when deregulation occurred, Federal mandates, the ability to recover costs, and the attitude of participants, that would determine success. Several commenters responded that if such a pool could be developed, it would be a useful or constructive mechanism.

NEI and six commenters taking the same position expressed doubts about the usefulness of such a pool, but suggested that the industry should examine it. They argued that in addition to an insurance pool, NRC should also consider approving self-insurance as an option.

Almost half the commenters expressed strong doubts about the insurance concept. No such product currently exists, and insuring against shortfalls in funding a known and planned event would be a novel concept, open to problems of adverse selection and moral hazard.[4] Some commenters said it would be difficult to underwrite, and wondered whether in a competitive environment one company would be interested in supporting the financial obligations of its competitors. A cross-subsidy of this sort, one said, was what deregulation was being undertaken to eliminate. Participation also might be affected by the policies of individual State PUCs. Premium setting would be difficult because of the possibility that utilities that had been prepared to pay their decommissioning costs would be reluctant to subsidize utilities that had not, and because premiums, to provide sufficient coverage, might need to be large. The pool could face the problem of motivating utilities to close plants when it would otherwise not be economic to do so, or motivating State PUCs to disallow the recovery of decommissioning costs through rates in reliance on the pool. Some utilities might underestimate their decommissioning costs, to keep their premiums low. A pool would increase costs of electricity because, in addition to decommissioning costs, insurance premiums would need to be recovered. Finally, one serious decommissioning shortfall might deplete the pool.

Other commenters stated flatly that they opposed the concept. Several said that it raised the problem of insuring against an event that a facility could choose to create (the moral hazard problem). An insurance pool would create, at the least, an incentive for less responsible utilities to underfund their decommissioning assurance, burdening responsible utilities with high insurance premiums. Some commenters argued that licensees demonstrating strong financial capability should not be required to participate. Reinsurance and diversification to larger pools would make better policy, in the view of one commenter.

*Response.* The Commission recognizes the problems associated with the concept of a captive insurance pool as identified by the above commenters, and believes that they are serious enough to eliminate this option from further consideration. The Commission is also of the opinion that those in favor of this option do not offer sufficient evidence that the identified problems can be overcome.

C.9 Other Options for NRC in Case of Limited Role for PUC or FERC

Commenters suggested a wide variety of financial assurance options for NRC to consider if PUC or FERC oversight is limited or eliminated. One utility suggested that financial assurance requirements should be focused on the financial viability of the responsible entity. Other utilities suggested, as nonregulatory showings, self-guarantees

[4] ''If the risk of the insurable event varies between potential buyers, if the buyers know their risk level better than the insurer, and if the coverage is not mandatory, then the worst risks will tend to buy the most insurance. As a result, the loss experience will tend to be higher than expected, premiums will increase, the best risks will leave the programs, and the process can cycle on itself until only the worst risks are left.'' This phenomenon is known as adverse selection. Moral hazard is defined as a general laxity in loss prevention, laxity in cost control, once a loss has occurred, and the intentional destruction of property. U.S. Nuclear Regulatory Commission, ''Design, Costs, and Acceptability of an Electric Utility Self-Insurance Pool for Assuring the Adequacy of Funds for Nuclear Power Plant Decommissioning Expense,'' NUREG/CR–2370, December 1981.

or other tests of financial strength such as ownership of other revenue-producing assets (e.g., electricity transmission and/or distribution and/or natural gas operations). Another relevant factor could be whether the licensee has insurance for premature decommissioning caused by an accident. One commenter stated its opposition to the use of surety bonds and insurance because of cost and limited availability.

Two utility commenters suggested that regulatory approaches include mandated or allowed stranded cost recovery through a charge on distribution or transmission or some other charge on all electric power or energy sales, regulatory certification that such costs will be recovered, and other arrangements involving regulatory control such as priority dispatch for nuclear units. Another commenter suggested that NRC could request FERC to clarify Order No. 888 to make certain that competitive access or other transmission charges intended to recover stranded costs also include a load-proportionate contribution to fund decommissioning costs. Another commenter stated that NRC and FERC should urge Congress to adopt stranded cost legislation that will ensure recovery of decommissioning costs as the most prudent solution. The commenter specifically advocates a wires charge that would include decommissioning costs.

One commenter asked NRC to consider its actions in the event that a licensee enters into bankruptcy. In such a case, the NRC could enter the proceeding and argue that full funding for decommissioning must be fulfilled as the first priority. The commenter also asked NRC to consider proposing legislation that would amend the Bankruptcy Code to give first priority to nuclear decommissioning costs, as the Supreme Court has already held for hazardous waste cleanup costs.

NEI and several other commenters raised the possibility that NRC could rely on the Financial Accounting Standards Board's [5] (FASB) financial disclosures for information in assessing the nature, timing, and extent of the company's commitment of its future resources.

According to one commenter, NRC should evaluate each utility's particular situation on a case-by-case basis to determine the degree of assurance needed depending on the financial strength of the utility, the size of the remaining unfunded obligation, the age of the plant, and other factors as may be appropriate to the specific situation. Another believes NRC could retain control through licensing constraints and financial evaluations made when NRC approves transfers of assets and licenses.

A number of utilities commented that NRC need not identify all options immediately, but could ultimately authorize a number of alternative approaches, either based on 10 CFR 50.75 or on options that have not yet been recognized. A PUC commenter asked NRC to work collaboratively with States to explore, as necessary, alternative financial assurance mechanisms in the event that privately owned nuclear generators are no longer regulated.

One commenter suggested that NRC's support for existing Federal obligations to provide a national nuclear fuel repository would also contribute to the financial assurance of responsible nuclear decommissioning. Another called for financial assurance to be mandated at the Federal level, and a third said NRC should consider whether DOE responsibility can be developed for providing solutions to decommissioning.

Four commenters said no other options were necessary. They reasoned that current options are sufficient irrespective of PUC or FERC oversight, regulatory oversight is unlikely to be curtailed, and FASB standards and competitive pressures will provide sufficient assurance.

*Response.* The Commission believes that additional consideration of accelerated decommissioning funding or other alternative financial assurance mechanisms may be warranted, as discussed in its response at C.6. In addition, it should be pointed out that the Commission enters bankruptcy proceedings to protect the integrity of the decommissioning funding, as suggested by a commenter. Also, the Commission is proposing use of the FASB standard as a means for the reporting decommissioning obligations. Further, the Commission believes that the proposed change to the definition of ''electric utility'' will be adequate to address all contingencies with respect to financial assurance for decommissioning under deregulation. Further, the proposed reporting requirement will provide the NRC with the opportunity to be informed on the status of licensees' financial assurance for decommissioning.

*D. Federal Government Licensee Use of Statement of Intent*

Slightly fewer than half of the commenters (20 commenters) expressed an opinion on this question. Almost all commenters took the position that Federal licensees should be treated in the same way as non-Federal licensees. NEI argued that regardless of who owns the plant, a number of options for financial assurance should be allowed, and the current options should continue to be permitted. One commenter stated clearly that because Federal licensees were expected to face the same problems as other licensees, they should be required to set aside funds rather than rely on statements of intent. Several commenters pointed out that different treatment for Federal licensees could create competitive advantages for the Federal licensees. NRC should ensure that the playing field remained level. One licensee argued that if a financial assurance option, such as a statement of intent, meets NRC's criteria, it should be available for use by all licensees. Others took the position that the statement of intent should not be allowed, because it does not provide any assurance. Its use by Federal licensees means that the taxpayers are providing the assurance. One licensee questioned the long-term financial condition of the Tennessee Valley Authority (TVA). One commenter argued that use of tax exempt bonds provides a similar competitive advantage to those licensees who can issue them.

Only TVA took the position that ample reasons exist for continuing the use of statements of intent as provided under the current regulations. However, TVA also provided an extended description of the steps it has taken to use an external trust, ''all requirements'' contracts, and its power to issue indebtedness to ensure its decommissioning costs.

*Response.* The NRC's Office of the Inspector General published an Audit Report, ''NRC's Decommissioning Financial Assurance Requirements for Federal Licensees May Not be Sufficient,'' OIG/95A–20, dated April 3, 1996. The report found that ''* * * NRC's decision to allow Federal licensees to use a statement of intent * * * was based primarily on the assumption that the Federal Government would pay the financial obligations of the lone Federal licensee, * * * should it be unable to do so. However, based on our review of the U.S. Code and discussions with officials from the Department of the Treasury, the Office of Management and

[5] The Financial Accounting Standards Board is a private body that establishes authoritative financial accounting and reporting standards in the United States.

Budget and TVA, we believe NRC's assumption is questionable.'' The report also found ''* * * that, although not required, TVA has established a fund dedicated to meet its decommissioning obligations. However, because this is an internal fund it can be used for other purposes. In fact, TVA had at one time temporarily depleted its decommissioning fund.''

The majority of those who commented were opposed to allowing the TVA's use of a statement of intent, their reason basically being that all licensees should have the same ''level playing field.'' The Commission, however, does not believe that the elimination of the statement of intent option for a Federal licensee can be justified on a public health and safety basis. The Commission believes that the risk of a Federal licensee not being able to fund its decommissioning expenses is remote, as the Commission is proposing to define a ''Federal licensee'' as having the full faith and credit backing of the Federal Government. The Commission considers the issue of whether TVA qualifies for the use of a statement of intent to be distinguishable from the question of whether other ''Federal licensees'' should have this option. Further, the Commission does not believe it to be in the public interest to foreclose the possibility of a future licensee with the full faith and credit backing of the Federal Government using a statement of intent. Hence, the Commission does not propose to eliminate the statement of intent as an option for Federal licensees, but realizes that this proposed definition may result in the TVA no longer being able to meet NRC's definition of ''Federal licensee.''

*E. Trust Fund Earnings Credit for Extended Safe Storage Period*

Two commenters opposed credits for earnings during extended safe storage, arguing that earnings assumptions could be manipulated and that earnings could otherwise act as a hedge against increases in the cost of decommissioning. Seventeen commenters, however, supported allowing credit for earnings on funds during extended storage periods. Some of these commenters argued that if credits for earnings are not allowed, more funds than necessary would be collected, thereby generating unwarranted expense for licensees and customers and possibly intergenerational inequities.

An additional eight commenters supported allowing earnings credits, not only for the extended safe storage period, but also for other periods:

- The period before safe storage, when funds are accumulated;
- The decommissioning period, when funds flow out of the trusts; and
- Both the accumulation and outflow periods.

Three commenters expressed the opinion that States should decide whether or not to allow credit for projected earnings.

One group of commenters understood that NRC's ANPR considered a net positive rate of return when assessing the status of decommissioning funding during a SAFSTOR period, and not that a licensee would be allowed to consider prospectively during the license term the possibility of a net positive rate of return over some extended period following shutdown and prior to actual decommissioning. These commenters felt that it would be largely irrelevant to start considering positive earnings during a SAFSTOR period because, by the time of termination of operations, licensees should have already accumulated sufficient funds to pay for decommissioning.

Another commenter disagreed with the position that excludes the benefit of future tax deductions (i.e., in ''non-qualified'' trust accounts) in determining the adequacy of a licensee's decommissioning funding program because the deductions will have value for those who assume the responsibility for decommissioning.

*Response.* The Commission is proposing to allow credit for earnings and believes that its existing implicit assumption of a zero rate of return is too conservative and not borne out by the data. The Commission is proposing licensees may take credit using a 2 percent real rate of return from the time of the funds' collection through the decommissioning period. As stated below, this proposed action provides licensees relief from current requirements with no adverse impact on public health and safety, licensees, or NRC resources, and the proposed reporting requirements would allow the licensees' decommissioning funds to be monitored by the Commission.

E.1 Real Rate of Return

Five commenters took the position that NRC should not specify a single allowable rate of return, but should allow licensees to take credit for any rate they can justify given their specific situation. Some of these commenters supported their positions by stating that licensees employ different investment strategies depending on factors such as the number of plants, when they expect to begin decommissioning, applicable State taxes, and whether the funds are in a qualified or nonqualified trust. Another commenter suggested that plant-specific annualized rates could be justified based on historical data. Considerable judgment will be needed to develop the rate, argued one utility group, but no more judgment than is needed in developing decommissioning cost estimates.

Three commenters suggested that NRC use long-term, historical rates for the asset allocation employed, adjusted by the long-term, historical inflation rate.

Six commenters stated that NRC should not specify a single allowable rate of return, but should define the basis on which licensees may select an appropriate positive real rate.

Four commenters expressed the view that States should decide the rate, and a fifth commenter thought either States or FERC should decide the rate. Another commenter thought the rate should be determined by an (unidentified) ''acceptable third party.''

One commenter suggested an after-tax rate of 3 percent as reasonable and achievable with acceptable levels of investment risk (e.g., 50 percent equity, 50 percent fixed income). Another commenter proposed a rate of 3 percent because that rate is the historical real return on Treasury bonds. One commenter felt NRC should float the values based on contemporary 30-year Treasuries.

Two commenters opposed the use of a positive rate assumption for earnings during extended safe storage, arguing that earnings assumptions could be manipulated and that earnings could otherwise act as a hedge against increases in the cost of decommissioning.

*Response.* Based on the NRC review of historical data, real (i.e., inflation adjusted, after tax) rates of return using U.S. Treasury issues have been on the order of 2 percent. Therefore, the Commission proposes to use a 2 percent real rate of return throughout the decommissioning collection period as a default earnings amount and in the safe storage period as a specified amount. The NRC acknowledges that the historical data is subject to some degree of interpretation, and that a 3 percent real rate may be viewed by some as a ''reasonable'' measure for this parameter. While some may propose use of higher values based on other types of investments, the Commission believes the proposed value represents as close to a ''risk free'' return as possible and has increased confidence that the 2 percent value can be consistently achieved. Higher earnings amounts will be allowed during the period of reactor

operation if specifically approved by a rate-setting authority. To the extent that earnings in a given year prove to be greater than 2 percent, the balance of the fund will be greater than anticipated. Licensees may take this higher balance into account in calculating subsequent contributions to their sinking funds. This means the size of subsequent contributions will decrease, even though these subsequent contributions will still be based on a 2 percent earnings assumption. If rates turn out to be lower than this, 10 CFR 50.82 already provides that licensees are to adjust decommissioning funds during safe storage to reflect changes in cost estimates. Thus, there is little risk that there will be major shortfalls in decommissioning funds. Further, the proposed reporting requirements will allow the licensees' decommissioning funds to be monitored by the Commission.

E.2 Appropriate Time Period

Twelve commenters expressed the view that credit for projected earnings should be allowed over the full length of the extended safe storage period. An additional eight commenters also thought credit should be allowed for earnings projected over additional periods:

- The period before safe storage, when funds are accumulated.
- The decommissioning period, when funds flow out of the trusts.
- Both the accumulation and outflow periods.

Two more would allow commensurate credit for a period with site-specific schedules for funding and decommissioning. Another commenter noted that considerable judgment would be needed to determine the appropriate time period, but no more than would be needed to develop the decommissioning cost estimate. Four commenters, all PUCs or PUC groups, felt NRC should leave the issue of the length of the period to the States.

Only two commenters suggested that credit be limited to a fixed number of years. One of these suggested 10 years. The other proposed a maximum of 20 years, and a minimum of 5 years.

Two commenters opposed the use of positive earnings assumptions during any period, arguing that earnings assumptions could be manipulated and that earnings could otherwise act as a hedge against increases in the cost of decommissioning.

*Response.* The Commission proposes to allow licensees to take credit for earnings on external sinking funds from the time of the funds' collection through the decommissioning period. Because the NRC is requiring the funding, it is reasonable for the NRC to provide for a positive rate of return on the collected funds, where justified. Further, the NRC is proposing a longer period in which credit should be allowed for earnings because the justification for allowing a positive rate of return over the safe storage period also holds for allowing credit from the time of fund collection through the decommissioning period. Again, the proposed reporting requirement provides the NRC with the ability to monitor licensees' decommissioning funds. Lastly, this proposed action provides licensees relief from current requirements with no adverse impact on public health and safety, licensees, or NRC resources.

*F. Reporting on the Status of Decommissioning Funds*

Many commenters supported a reporting requirement in light of concerns about decommissioning funding. Some of these felt that NRC should require relatively comprehensive reports because NRC's authority extends beyond that of FERC and the States, and because FERC and the States do not always require uniform information to be submitted at regular intervals. One commenter stated that an NRC regulatory amendment is needed even in the absence of deregulation to correct the flawed assumption that PUCs and FERC actively monitor decommissioning funds. The commenter stated that PUC and FERC monitoring efforts are, in most cases, limited in scope and may take place infrequently (i.e., when a rate case is filed). Each PUC is generally concerned only about its jurisdictional portion of the decommissioning funds, and FERC's jurisdiction is limited to only the wholesale portion of a company's sales. Moreover, many States do not have jurisdiction over municipal and cooperative agencies, some of which are owners or partial owners of nuclear plants. Therefore, the NRC may be the only regulating agency that can provide an effective and timely monitoring function for all the funds required for decommissioning.

Three commenters opposed a reporting requirement as unnecessary, while two others believed such a requirement was premature and could conflict with or be duplicative of information that may be required by forthcoming FASB standards. Two commenters stated that NRC requirements should not duplicate requirements of States or FASB. Lastly, a commenter stated that if PUC oversight is limited or eliminated, NRC should assume oversight of decommissioning funds.

*Response.* The Commission is proposing that a periodic reporting requirement be implemented so that the Commission has appropriate assurance that licensees are collecting their required decommissioning funds. The benefits of obtaining this information through a reporting requirement, in terms of both determining licensee compliance with NRC decommissioning funding regulations and responding to Congressional and other requests, outweigh the minimal impact of the requirement and would be less burdensome to licensees and the NRC than relying on the existing NRC inspection process.

F.1 Contents

Three commenters stated that reporting requirements would be unobjectionable if they were minimal and limited to material of the nature historically provided to State regulators or in other financial reports. Similarly, others stated that NRC should rely on the same information as will be required by the proposed FASB statement regarding accounting for certain liabilities related to closure or removal of long-lived assets. Five commenters agreed with the NEI that reports should be kept as simple as possible. One commenter stated that comprehensive reports should be prepared for each facility, integrating information for all owners. Thus, if a facility has multiple owners, one consolidated report would be prepared with separate data for each owner attached. On the other hand, one commenter argued that reports should be based on the licensee's interest in the nuclear unit and not on a total unit basis.

One group of commenters stated that NRC could make the annual reports from plant operators available to the public, which would be consistent with the availability of information required under proposed FASB standards.

A PUC stated that New Jersey's reporting rules may be adequate for NRC's purposes.

Suggested contents for the reports included 50 items under the following general headings: Decommissioning Costs and Activities, Contributions, Trust Status and Activity, Other Financial Information, and several Miscellaneous Items.

*Response.* The Commission is in the process of issuing a draft regulatory guide on this proposed requirement which would endorse FASB draft standard No. 158-B, ''Accounting for Certain Liabilities Related to Closure or Removal of Long-Lived Assets.'' The

NRC is endorsing this draft FASB standard as a means of providing guidance for licensees to comply with those portions of the NRC's regulations regarding a licensee's reporting on the status of its decommissioning funding. Licensees would comply with the FASB standard once it becomes final in order to remain consistent with generally accepted accounting principles. The NRC believes that the FASB standard would, if adopted, provide the required information. However, because of the ambiguity in the FASB standard with respect to whether the required information will be reported on a per-unit basis, the NRC has defined its reporting requirement to include such per-unit information. The NRC has reviewed the proposed contents of the reports on decommissioning funds to ensure that the needs of the agency are balanced versus the time constraints of the licensees in assembling the reports. The Commission is also proposing to require that any modifications to a licensee's external trust agreement also be reported.

F.2 Frequency

Several commenters stated that licensees should report on the status of decommissioning funds on an annual basis. Others believed reports should be required no more frequently than annually. NEI stated that NRC should not require licensees to report on the status of their decommissioning funds any more frequently than every 3 to 5 years. NEI noted that SEC rules and proposed FASB standards require utilities to disclose the decommissioning costs in financial statements.

Two commenters suggested reporting at 5-year intervals. One of these suggested that interim status reports could be required on an annual basis.

One commenter stated that NRC should require no more frequent reporting beyond FASB requirements. Another commenter stated that reports should be no less frequent than specified by the Securities and Exchange Act of 1934.

One commenter suggested that NRC consider more frequent reporting for plants approaching the end of commercial operation and for plants experiencing operating problems. One commenter stated that the timing of required reports should parallel that of other reports such as FERC Form 1, SEC 10–K, and annual financial reports. Similarly, two commenters felt that annual reports should be caused by NRC by September 30 of the following year. Two commenters stated that interim reports could be required for significant events (e.g., merger, acquisition, financial deterioration). This commenter also suggested that limited or negative growth of the fund in a given year due to overall market conditions should not automatically trigger adjustments to funding levels but rather that a 3- to 5-year time frame should be used.

*Response.* The Commission is proposing that every licensee submit its initial report on the status of decommissioning funds to the NRC within 9 months after the effective date of this rule, and at least once every 2 years thereafter. Annual submission is not being proposed as an option because the NRC believes it can adequately review licensee financial assurance status for decommissioning biennially while reducing licensee reporting burden. However, the licensee(s) of any plant that is within 5 years of its planned end of operation would be required to submit its report annually.

*G. Comments on Topics Not Specifically Raised in the ANPR*

Commenters suggested several actions that NRC had not asked about specifically in the ANPR. First, a commenter stated that NRC should require sites to be decommissioned to ''green field'' status, consistent with FERC guidelines.

*Response.* The Commission's position is that once radioactive contamination of the reactor facility is removed to a level acceptable to the NRC, there is no longer a health and safety concern preventing the NRC license from being terminated.

A commenter suggested the imposition of a mandatory insurance requirement for licensees to cover fund shortfalls at the time of premature decommissioning in States where accelerated collection from ratepayers and intergenerational subsidies are not allowed.

*Response.* The Commission does not agree with the commenter on the need for mandatory insurance. As stated in the response to comments on Stranded Costs, Section B, the previously referenced ''Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry'' stated that the NRC has the authority ''to take actions that may affect a licensee's financial situation when these actions are warranted to protect public health and safety.'' The Commission believes that there are enough alternatives available to address the potential problems caused by premature decommissioning so that mandatory insurance would not be required.

One commenter stated that the requirements for subaccounts should be waived. Their position is that licensees that have contributed monies to a single trust fund for multiple decommissioning-related purposes be required simply to demonstrate to the NRC that there are or will be sufficient assets in the trust fund, in the aggregate, to pay for the NRC-defined decommissioning cost of the nuclear unit and for any other decommissioning-related purposes identified in the trust agreement.

*Response.* The Commission is not concerned with the details of how a licensee keeps accounts for decommissioning as long as a licensee is able to demonstrate, on a per-unit basis, the amount of funds identified and available for the required decommissioning purposes. Thus, the Commission accepts the commenter's position in general, although it notes that there is no current requirement, only guidance, relating to the use of subaccounts.

A commenter stated that NRC should undertake as a priority task the identification of nuclear plants that do not perform well. For plants with performance problems, NRC should take aggressive steps to persuade the operator to sell the plant to another operator at a price that recognizes its market value or to terminate the license. In some cases, particularly when plants were financed with bond indentures or other instruments that limit the owner's ability to sell the plant or impose conditions on such sales, these restrictions would need to be identified in the process of identifying well-run plants. Further, the commenter states that if the plant does not produce a price acceptable to the operator, the Federal Government will offer a price that will provide the operator with some fraction of the purchase price and take over control and ownership, including any decommissioning fees that have been collected. The Federal Government would restart any plant it believes can continue as a source of power and will decommission the others from public funds.

*Response.* The Commission does not see its position as one to force a licensee to sell its plant. While the NRC does aggressively attempt to identify poorly performing plants through such processes as the ''Watch List,'' the decision as to whether another entity should become the operator of a facility is for the owners of that facility to make. Although the NRC would have to approve any transfer of control over any power plant license under Section 184 of the Atomic Energy Act and 10 CFR

50.80, the NRC is reluctant to become involved in the business decision-making processes of the licensees on such matters. As to the NRC taking over poorly performing plants, the Atomic Energy Act confers ''takeover'' authority on the NRC only in extremely limited circumstances. See Section 108 of the Atomic Energy Act (42 U.S.C. 2138) limiting such authority to circumstances where ''* * * the Congress declares that a state of war or national emergency exists* * *.''

A commenter stated that the NRC should develop a reliable, sound estimate (or method of estimating) decommissioning costs, and should update the estimates on a regular basis to incorporate technological and other changes.

*Response.* The Commission is planning to revise its estimates of decommissioning costs after it obtains actual plant-specific data from ongoing decommissioning projects.

Another commenter stated that NRC should sponsor technical conferences on decommissioning so the pace of technological resolutions for cleaning up and decommissioning plants could be increased.

*Response.* While the proposed action is not a suggested rulemaking, the Commission is taking the suggestion under consideration. However, the Commission is aware of a number of deregulation and decommissioning conferences that have been held or are being planned.

A commenter stated that the NRC should ask separately about other financial issues because changes to the definition of ''electric utility'' could have implications in contexts other than decommissioning, such as general financial qualifications reviews for initial licensing and related license amendments, from which utilities are now exempted.

*Response.* While the Commission is not presently asking questions on other financial issues, it is attempting to address the concerns by proposing revisions to Part 50 to be consistent with the proposed change in the definition of ''electric utility.''

A commenter stated that NRC should delay action as the Texas PUC has initiated three regulatory investigation projects focusing on the restructuring and partial deregulation of the electric industry in that State. Further, the State has not developed a formal policy on many of the issues set forth in the ANPR.

*Response.* It is because of the number and variety of State actions being proposed in the areas of deregulation and restructuring that the Commission is proposing this rulemaking now. The Commission wishes to prepare for any new types of nuclear power generating licensees resulting from the States' actions. However, the Commission is well aware that this proposed rulemaking may not be the last action for it to undertake in this area.

One commenter stated that the Commission should support revisions to Internal Revenue Code Section 468A regarding deductibility for contributions to an external fund.

*Response.* The commenter does not make a suggestion as to what should be done in this rulemaking. Rather, the suggestion goes to questions regarding consideration of whether any changes to the U.S. Code are needed to address decommissioning financial assurance, in particular any changes to the Bankruptcy Code. This matter will be addressed separately by the NRC as part of its input to an inter-agency review process for the development of proposed legislation.

Lastly, a commenter stated that the NRC should hold all licensees to the same high standard for assurance of decommissioning funds. Previously, the NRC had one standard for non-utility licensees and a much more lenient standard for rate-regulated utilities. NRC must establish strict and thorough standards for the collection, investment, segregation, and reporting of decommissioning funds and those standards must apply to all licensees, including those that have traditionally been considered regulated utilities.

*Response.* The Commission position is that it is not necessary to impose any additional decommissioning funding requirements on those entities that meet the proposed definition of ''electric utility.'' However, as explained above, the Commission believes that those entities that no longer meet the proposed definition should be required to meet the more ''strict'' standards. The Commission also believes that most power reactor licensees would be allowed to fund decommissioning costs through non-bypassable charges.

To summarize, the Commission's underlying philosophy of financial assurance for decommissioning is unchanged. Basically, those licensees that remain ''electric utilities'' by the Commission's revised definition should follow the same financial assurance regulations as before. However, the Commission believes that this proposed rulemaking provides for adequate protection in the face of a changing environment that was not envisioned when the existing rule was originally written. Further, with deregulation, the Commission does not believe that it would be able to identify all the potential types of licensees to which it will be exposed. Therefore, new and unique restructuring proposals will necessarily involve ad hoc reviews by the NRC. Further, the Commission will exercise direct oversight of such reviews to maintain consistent NRC policy toward new entities. In addition to the proposed definition revisions, the Commission is proposing two other modifications. The first is to require power reactor licensees to periodically report on the status of their decommissioning funds and changes to their external trust agreements. Second, the Commission is proposing to allow licensees to take credit for the earnings on decommissioning trust funds. The Commission does not see the need to take actions proposed by some commenters that would, in its view, strain licensees unnecessarily, because of licensees' competing needs.

## Section-By-Section Description of Changes

### *10 CFR Part 50*

Section 50.2 is amended to revise the definition of ''electric utility'' in response to deregulation of the electric generating industry. The section also is amended by the insertion of definitions of previously undefined terms that aid in the understanding of the NRC's rulemaking position. Further, ''Federal licensee'' is defined, so that the characteristics of a licensee that may make use of a statement of intent as a mechanism to satisfy financial assurance requirements for decommissioning is clarified. Sections 50.43, 50.54, 50.63, 50.73, and 50.75 are amended to replace the term ''licensees'' or a similar term depending on the context for the term ''electric utility'' to be consistent with the proposed changes to 10 CFR 50.2.

Section 50.43 is amended so States are added to regulatory agencies as those entities to which the Commission will give notice of application for a class 103 license for a commercial power generation facility.

Section 50.54(w) is amended by requiring that power reactors, as opposed to electric utilities, obtain insurance in the manner prescribed.

Section 50.63 is amended so that licensees, as opposed to the originally used term utilities, are required to provide specific material for NRC review relating to reactor core and associated systems.

Section 50.73 is amended to refer to ''licensee'' rather than ''utility'' personnel in stating the information required to be reported regarding

personnel errors related to matters requiring a Licensee Event Report.

Section 50.75 is amended in three paragraphs to include the definitional change in the reporting and recordkeeping for decommissioning planning.

Section 50.75 also is amended to allow licensees to take 2 percent credit on earnings for prepaid trust funds and external sinking funds, to institute a reporting requirement for licensees on the status of their decommissioning funding and on changes to licensees' external trust agreements.

*Electronic Access*

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the advance notice of proposed rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number 1-(800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules Menu.

You may also access the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format) if your web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–6215; e-mail CAG@nrc.gov.

*Finding of No Significant Environmental Impact: Availability*

The NRC is proposing to amend its regulations on financial assurance requirements for the decommissioning of nuclear power plants. The proposed amendments are in response to the likelihood of deregulation of the power generating industry and resulting questions on whether current NRC regulations concerning decommissioning funds and their financial mechanisms will need to be modified. The proposed action would revise the definition of ''electric utility'' contained in 10 CFR 50.2, would add a definition of ''Federal licensee'' to address the issue of which licensees may use statements of intent, and would require power reactor licensees to report periodically on the status of their decommissioning funds and on the changes in their external trust agreements. Also, the proposed amendments would allow licensees to take credit for the earning on decommissioning trust funds.

These proposed changes could have the following effects on nuclear power reactor licensees: (1) Potentially requiring licensees who have been ''deregulated'' to secure decommissioning financial assurance instruments that provide full current coverage of projected decommissioning costs, (2) limiting the types of licensees that can qualify for the use of Statements of Intent to satisfy decommissioning financial assurance requirements, (3) requiring periodic reporting on the status of their accumulation of decommissioning funds, thus leading to the potential for the NRC to require some remedial action if the licensee's actions are inadequate, and (4) permitting licensees to assume a real rate of return of two percent per annum, or such other rate as is permitted by a Public Utility Commission or the Federal Energy Regulatory Commission, on their accumulated funds. These actions are of the type focused upon financial assurances and mechanisms to assure funding for decommissioning and are not actions that would have any effect upon the human environment. Neither this action nor the alternatives considered in the Regulatory Analysis supporting the proposed rule would lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988 (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988).[6]

Promulgation of these rule changes would not introduce any impacts on the environment not previously considered by the NRC. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. No other agencies or persons were contacted in reaching this

[6] Copies of NUREG–0586 are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW. (Lower Level) Washington, DC 20555–0001; telephone (202) 634–3273; fax (202) 634–3343. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402–9328; telephone (202) 512–2249; or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

determination, and the NRC staff is not aware of any other documents related to consideration of whether there would be any environmental impacts of the proposed action. The foregoing constitutes the environmental assessment and finding of no significant impact for this proposed rule.

*Paperwork Reduction Act Statement*

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this information collection is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by October 10, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

*Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

*Regulatory Analysis*

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Brian J. Richter, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6221, e-mail bjr@nrc.gov.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

*Regulatory Flexibility Certification*

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (March 29, 1996), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing, operation, and decommissioning of nuclear power plants. The companies that own these plants do not fall in the scope of the definition of ''small entities'' set forth in the NRC's size standards (10 CFR 2.810).

*Backfit Analysis*

The regulatory analysis for the proposed rule also constitutes the documentation for the evaluation of backfit requirements, and no separate backfit analysis has been prepared. As defined in 10 CFR 50.109, the backfit rule applies to

> * * * modification of or addition to systems, structures, components, or design of a facility; or the design approval of manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position * * *.

The proposed amendments to NRC's requirements for the financial assurance of decommissioning of nuclear power plants would revise the definition of ''electric utility,'' define ''Federal licensee,'' and add several associated definitions; add new reporting requirements pertaining to the use of prepayment and external sinking funds; impose new reporting requirements for power reactor licensees on the status of decommissioning funding that specify the timing and contents of such reports; and permit power reactor licensees to take credit for a 2 percent annual real rate of return on funds set aside for decommissioning from the time the funds are set aside through the end of the decommissioning period. These proposed actions are necessary to ensure that nuclear power reactors provide for adequate protection of the health and safety of the public in the face of a changing environment not envisioned when the reactor decommissioning funding regulations were promulgated.

Although some of the changes proposed to the regulations are reporting requirements, which are not covered by the backfit rule, other elements in the proposed changes could be considered backfits because they would modify or clarify procedures with respect to (1) acceptable decommissioning funding options under various scenarios, (2) what licensees may use statements of intent, and (3) permitted credit for real rates of return on funds set aside for decommissioning. The NRC has determined to treat this action as an adequate protection backfit, because the action is necessary for the NRC to maintain assurance of adequate funding for power plant decommissioning, particularly in the face of the uncertainties associated with electric utility restructuring and deregulation. Accordingly, these proposed changes to the regulations are required to satisfy 10 CFR 50.109(a)(5) and a full backfit analysis is not required pursuant to 10 CFR 50.109(a)(4)(ii).

**List of Subjects in 10 CFR Part 50**

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.2 the definition of *Electric Utility*, is revised and the definitions of *Cost of service regulation, Federal licensee*, and *Non-bypassable charges* are added in alphabetical order to read as follows:

### § 50.2 Definitions.

* * * * *

*Cost of service regulation* means the traditional system of rate regulation in which a rate regulatory authority allows an electric utility to charge its customers all reasonable and prudent costs of providing electricity services, including a return on the investment required to provide such services.

* * * * *

*Electric utility* means any entity that generates, transmits, or distributes electricity and that recovers the cost of this electricity through rates established by a regulatory authority, such that the rates are sufficient for the licensee to operate, maintain, and decommission its nuclear plant safely. Rates must be established by a regulatory authority either directly through traditional cost of service regulation or indirectly through another non-bypassable charge mechanism. An entity whose rates are established by a regulatory authority by mechanisms that cover only a portion of its costs will be considered to be an ''electric utility'' only for that portion of the costs that are collected in this manner. Public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, that establish their own rates are included within the meaning of ''electric utility.''

* * * * *

*Federal licensee* means any NRC licensee that has the full faith and credit backing of the United States Government.

* * * * *

*Non-bypassable charges* means those charges imposed by a governmental authority which affected persons or entities are required to pay to cover costs associated with operation, maintenance, and decommissioning of a nuclear power plant. Affected individuals and entities would be required to pay those charges over an established time period.

* * * * *

3. In § 50.43, paragraph (a) is revised to read as follows:

### § 50.43 Additional standards and provisions affecting class 103 licenses for commercial power.

* * * * *

(a) The Commission will give notice in writing of each application to such regulatory agency or State as may have jurisdiction over the rates and services incident to the proposed activity; will publish notice of the application in such trade or news publications as it deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and will publish notice of the application once each week for 4 consecutive weeks in the **Federal Register**. No license will be issued by the Commission prior to the giving of such notices and until 4 weeks after the last publication in the **Federal Register**.

* * * * *

4. In § 50.54, the introductory text of paragraph (w) is revised to read as follows:

### § 50.54 Conditions of licenses.

* * * * *

(w) Each power reactor licensee under this part for a production or utilization facility of the type described in §§ 50.21(b) or 50.22 shall take reasonable steps to obtain insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the licensee's obligation, in the event of an accident at the licensee's reactor, to stabilize and decontaminate the reactor and the reactor station site at which the reactor experiencing the accident is located, provided that:

* * * * *

5. In § 50.63, paragraph (a)(2) is revised to read as follows:

### § 50.63 Loss of alternating current power.

(a) * * *

(2) The reactor core and associated coolant, control, and protection systems, including station batteries and any other necessary support systems, must provide sufficient capacity and capability to ensure that the core is cooled and appropriate containment integrity is maintained in the event of a station blackout for the specified duration. The capability for coping with a station blackout of specified duration shall be determined by an appropriate coping analysis. Licensees are expected to have the baseline assumptions, analyses, and related information used in their coping evaluations available for NRC review.

* * * * *

6. In § 50.73, paragraph (b)(2)(ii)(J)(*2*)(*iv*) is revised to read as follows:

### § 50.73 Licensee event report system.

* * * * *

(b) * * *

(*2*) * * *

(ii) * * *

(J) * * *

(*2*) * * *

(*iv*) The type of personnel involved (i.e., contractor personnel, licensed operator, nonlicensed operator, other licensee personnel.)

* * * * *

7. In § 50.75, paragraphs (a), (b), (d), (e)(1)(i), (e)(1)(ii), and (e)(3) introductory text are revised and paragraphs (f)(1), (2), and (3) are redesignated as paragraph (f)(2), (3), and (4) and a new paragraph (f)(1) is added to read as follows:

### § 50.75 Reporting and recordkeeping for decommissioning planning.

(a) This section establishes requirements for indicating to NRC how reasonable assurance will be provided that funds will be available for decommissioning. For power reactor licensees it consists of a step-wise procedure as provided in paragraphs (b), (c), (e), and (f) of this section. Funding for decommissioning of electric utilities is also subject to the regulation of agencies (e.g., Federal Energy Regulatory Commission (FERC) and

State Public Utility Commissions) having jurisdiction over rate regulation. The requirements of this section, in particular paragraph (c), are in addition to, and not substitution for, other requirements, and are not intended to be used, by themselves, by other agencies to establish rates.

(b) Each power reactor applicant for or holder of an operating license for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by 10 CFR 50.33(k) of this part containing a certification that financial assurance for decommissioning will be provided in an amount which may be more but not less than the amount stated in the table in paragraph (c)(1) of this section, adjusted annually using a rate at least equal to that stated in paragraph (c)(2) of this section, by one or more of the methods described in paragraph (e) of this section as acceptable to the Commission. The amount stated in the applicant's or licensee's certification may be based on a cost estimate for decommissioning the facility. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section is to be submitted to NRC.

* * * * *

(d) Each non-power reactor applicant for or holder of an operating license for a production or utilization facility shall submit a decommissioning report as required by 10 CFR 50.33(k) of this part containing a cost estimate for decommissioning the facility, an indication of which method or methods described in paragraph (e) of this section as acceptable to the Commission will be used to provide funds for decommissioning, and a description of the means of adjusting the cost estimate and associated funding level periodically over the life of the facility.

(e)(1) * * *

(i) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. A licensee may take credit on earnings on the prepaid decommissioning trust funds using a 2 percent annual real rate of return from the time of the funds' collection through the decommissioning period, if the licensee's rate-setting authority does not authorize the use of another rate.

(ii) External sinking fund. An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. A licensee may take credit for earnings on the external sinking funds using a 2 percent annual real rate of return from the time of the funds' collection through the decommissioning period, if the licensee's rate-setting authority does not authorize the use of another rate.

* * * * *

(3) For an electric utility, its rates must be sufficient to recover the cost of the electricity it generates, transmits, or distributes. These rates must be established by a regulatory authority such that they are sufficient for the licensee to operate, maintain, and decommission its plant safely. The Commission reserves the right to take the following steps in order to assure a licensee's adequate accumulation of decommissioning funds: review, as needed, the rate of accumulation of decommissioning funds; and either independently or in cooperation with either the FERC and the State PUC's, take additional actions as appropriate on a case-by-case basis, including modification of a licensee's schedule for accumulation of decommissioning funds. Acceptable methods of providing financial assurance for decommissioning for an electric utility are—

* * * * *

(f)(1) Each power reactor licensee shall report to the NRC within 9 months after [the effective date of the final rule], and at least once every 2 years thereafter on the status of its decommissioning funding for each reactor facility or part of a reactor facility that it owns. The information in this report must include, at a minimum: the amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75(b) and (c); the amount accumulated to the date of the report; a schedule of the annual amounts remaining to be collected; the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings in decommissioning trust funds, and rates of other factors (e.g., discount rates) used in funding projections; and any modifications occurring to a licensee's current trust agreement since the last submitted report. Any licensee for a plant that is within 5 years of the projected end of its operation shall submit such a report annually.

* * * * *

Dated at Rockville, Maryland, this 4th day of September, 1997.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

[FR Doc. 97–23962 Filed 9–9–97; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Part 255

**[Docket No. OST–97–2881; Notice No. 97–9]**

**RIN 2105–AC65**

## Computer Reservations System (CRS) Regulations

**AGENCY:** Office of the Secretary, Transportation

**ACTION:** Advance notice of proposed rulemaking

**SUMMARY:** The Department is initiating this rulemaking to determine whether it should continue or modify its existing rules governing airline computer reservations systems (CRSs). Unless extended by the Department, the existing rules (14 CFR part 255) will expire on December 31, 1997. It is the Department's preliminary position that the rules should be continued, probably with revisions.

**DATES:** Comments must be submitted on or before November 10, 1997. Reply comments must be submitted on or before December 9, 1997.

**ADDRESSES:** Comments must be filed in Room PL–401, Docket 49812, U.S. Department of Transportation, 400 7th St. S.W., Washington , D.C. 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file six copies of its comments.

**FOR FURTHER INFORMATION CONTACT:** Thomas Ray, Office of the General Counsel, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

**SUPPLEMENTARY INFORMATION:** The Department adopted its rules governing CRS operations—14 C.F.R. part 255—because CRSs had become essential for

the marketing of airline services for almost all airlines operating in this country. We found that the rules were necessary to ensure that the owners of the systems—all of which were airlines or airline affiliates—did not use them to unreasonably prejudice the competitive position of other airlines or to provide misleading or inaccurate information to travel agents and their customers. Our rules include a sunset date, December 31, 1997, so they will expire unless we readopt them after examining whether they are still necessary. We are beginning this proceeding to determine whether we should readopt the rules and, if so, with what modifications.

**The CRS Business**

A CRS consists of a periodically-updated central database that contains information on the travel services sold through the system. Subscribers (mainly travel agents) access the CRS through computer terminals, which are usually leased from the system. Consumers may also access a CRS through an on-line computer service or the Internet.

The most important service sold through a system is airline transportation, but a system user can also obtain information and conduct transactions for rental cars, hotels, and other travel services.

A CRS enables users to find out what airline seats and fares are available, to book a seat, and to issue a ticket on each airline that ''participates'' in the system, that is, that makes its services saleable through the CRS. Airlines participating in a system pay a fee whenever someone uses the system to make a booking on that airline (most of the systems also charge fees for related transactions, such as booking changes and cancellations). Other travel suppliers pay similar types of fees. The systems also charge many travel agency subscribers for using a CRS, although subscriber fees, unlike airline fees, are disciplined by competition and typically have been relatively small (and even offset by large bonuses for using a system). In the past each airline owning a system also benefited when travel agencies used its system, because those agencies made more bookings on that airline than they would have made if they had used a system that was not affiliated with that airline (this is the ''halo effect''). The size of the halo effect has apparently shrunk in recent years, in large part because the functionality offered by the systems for the owner airlines and other participating airlines has become more equal.

Four CRSs—each affiliated with one or more U.S. airlines—operate in the United States. The largest system, Sabre, is primarily owned by the parent corporation of American Airlines. Apollo, the second largest system, is operated by Galileo International, whose airline owners are United Air Lines, US Airways, Air Canada, and several European airlines. Both Sabre and Galileo International have public shareholders. Worldspan is owned by Delta Air Lines, Northwest Airlines, Trans World Airlines, and Abacus, a group of Asian airlines. The fourth system is Amadeus, a major European system primarily owned by Lufthansa, Air France, Iberia, and Continental Air Lines; Amadeus acquired System One, a system formerly controlled by an affiliate of Continental.

We found in our last major CRS rulemaking, completed in 1992, that CRSs had become essential for the marketing of the services of virtually all airlines. With the exception of Southwest Airlines and a few other low-fare carriers, all U.S. airlines had found it essential to distribute their services through each of the four CRSs operating in the United States because of the importance of travel agencies in the distribution of airline services and each travel agency's predominant use of a single system. 57 FR 43780, 43783–43784 (September 22, 1992).

In recent years seventy percent of all airline bookings in the United States have been made by travel agencies, and travel agencies rely almost entirely on CRSs to determine what airline services are available and to make reservations for their customers. Travel agencies rely so much on CRSs because of their efficiency. 57 FR at 43782. If travel agency offices commonly used several CRSs, travel agents would be able to obtain information and make bookings on a carrier even if the carrier participated in only some of the four systems. Each travel agency office, however, generally uses only one system for the great majority of its bookings. 57 FR at 43783.

An airline's ability to sell its services will be significantly impaired if its services are not displayed and offered for sale in each CRS used by a significant number of travel agents. If the airline does not participate in one system, the travel agents using that system must call the airline to obtain information and make bookings, which is substantially less efficient than using a CRS. Travel agents are less likely to book an airline when doing so is significantly more difficult than booking another airline that does participate in the agents' CRS. As a result, the non-participating airline will receive fewer bookings than it would have obtained if it participated in the agents' system. Because of the importance of marginal revenues in the airline industry, a loss of a few bookings on each flight is likely to substantially reduce the airline's profitability. 57 FR at 43783–43784.

An airline can try to mitigate the loss of bookings caused by non-participation in a system by establishing a direct electronic link between the travel agencies using that system and its own internal reservations system, but doing so is expensive and potentially less convenient for travel agents. An airline cannot create its own CRS, for entry into the CRS business would be extremely costly and the airline would have difficulty obtaining a significant market share. 57 FR at 43782–43784.

Airlines could exert some competitive pressure on the systems if they could encourage travel agencies to use one system instead of another, but that has appeared to be impracticable.

More recently, as explained below, airlines, travel agencies, and some systems have created new booking services that are accessible directly by consumers through the Internet. While the use of these services is growing rapidly, consumers make relatively few bookings through these services. Moreover, these services, except for the websites offered by individual airlines, use a CRS as their booking engine, so the growth in Internet bookings may not necessarily reduce airline dependence on CRSs.

**History of the Department's Regulation of CRSs**

CRSs became essential for airline distribution in the early 1980s. Each system's owner airline used its system to prejudice airline competition and give consumers misleading or incomplete information in order to obtain more bookings. These factors caused the agency formerly responsible for the economic regulation of airlines, the Civil Aeronautics Board (''the Board''), to adopt rules governing the operations of airline-affiliated CRSs. 49 FR 32540 (August 15, 1984). The Board based its CRS regulations primarily on its authority under section 411 of the Federal Aviation Act, later recodified as 49 U.S.C. 41712, to prevent unfair methods of competition and unfair and deceptive practices in air transportation and the marketing of airline transportation. On review the Seventh Circuit upheld the Board's rules. *United Air Lines* v. *CAB, 766 F.2d 1107 (7th Cir. 1985).*

The Board's major rules required each system to make participation available to all airlines on non-discriminatory terms, to offer at least one unbiased display, and to make available to each

airline participant any marketing and booking data from bookings for domestic travel that it chose to generate from its system. The Board's rules also prohibited certain contract terms that restricted the travel agencies' ability to choose between systems. For example, the Board fixed the maximum term for travel agency contracts at five years.

After the Board's sunset on December 31, 1984, we assumed the Board's responsibilities for airline regulation, including its regulation of CRSs.

The Board included a sunset date of December 31, 1990, in its rules to ensure that we would reexamine the need for the rules and the rules' effects. We initially conducted a study of the rules and the CRS business as part of the Secretary's study of domestic airline competition. Secretary's Task Force on Competition in the U.S. Domestic Airline Industry, *Airline Marketing Practices: Travel Agencies, Frequent-Flyer Programs, and Computer Reservation Systems* (February 1990).

We then conducted a rulemaking proceeding to reexamine the rules. 54 FR 38870 (September 21, 1989) (advance notice of proposed rulemaking); 56 FR 12586 (March 26, 1991) (notice of proposed rulemaking); and 57 FR 43780 (September 22, 1992) (the final rule). While we were completing our rulemaking, we extended the expiration date of the Board's rules so that they remained in effect until we adopted revised rules. 55 FR 53149 (December 27, 1990); 56 FR 60915 (November 29, 1991); 57 FR 22643 (May 29, 1992).

In finding that CRS rules remained necessary to promote airline competition, we determined that market forces still did not discipline the price or level of service offered participating airlines by the systems, that CRS owners would still use their control of the systems to prejudice airline competition if there were no rules, and that systems could still bias their displays of airline services if there were no rules requiring unbiased displays. 57 FR at 43783–43787.

We therefore maintained the Board's rules, which we strengthened in some respects. In determining which rules to adopt, we attempted to adopt rules that would promote competition in the CRS business and thereby make detailed regulation less necessary. In particular, we adopted rules (i) giving travel agencies the right to use third-party equipment and software in conjunction with a CRS (each vendor generally had required its subscribers to lease equipment from itself and limited their ability to use programs produced by independent firms), and (ii) giving agencies the right to use their CRS terminals (unless owned by the vendor) to access other CRSs and sources of airline information. Sections 255.9. We adopted these rules because vendors had barred travel agencies from using their terminals to access any other system or database, a restriction which discouraged agencies from using multiple systems. We hoped that the rules would make it likely that travel agencies would begin using multiple systems and databases, which would give airlines alternate electronic methods for providing travel agencies with information and booking capabilities and thereby create some competition for the systems. 57 FR at 43797. We similarly prohibited certain types of travel agency contracts that unreasonably limited an agency's ability to use more than one system. Section 255.8.

We also adopted rules (i) requiring each airline with a significant CRS ownership interest to participate in each other system at a level equal to its level of participation in its own system, if the other system's participation terms were commercially reasonable, (ii) requiring systems to offer participating airlines functionality that was more comparable to that offered owner airlines, and (iii) requiring systems to make marketing and booking data derived from bookings for international travel available to participating airlines. Sections 255.5, 255.7, and 255.10.

However, our rules did not address all of the complaints made by non-vendor carriers, the smaller CRSs, and the travel agencies. Some of the complaints were not valid. Others were valid, but neither we nor the commenters could devise workable and cost-effective rules that would solve the problems. For example, we adopted no rule limiting the level of booking fees, even though we found that they were not disciplined by competition, because each of the parties' suggested rules on limiting booking fee levels had serious flaws. 57 FR at 43816–43817.

To ensure that we would reexamine the need for our rules and their effectiveness, we included a sunset date, December 31, 1997, in our rules. 14 C.F.R. 255.12; 57 FR at 43829–43830 (September 22, 1992). If we do not readopt the rules or extend their expiration date, the rules will end on that date.

Our staff has begun a study of the CRS business and airline marketing practices. See Order 94–9–35 (September 26, 1994).

**Industry Developments**

There have been changes in the CRS business and airline marketing practices since our last major CRS rulemaking. We are examining those developments in our study, and we will take our study's findings into consideration in this rulemaking.

One important development is the creation of booking sites on the Internet for use by consumers. A number of airlines have created websites, as have many travel agencies and some CRSs. Although several on-line computer services have been offering electronic booking capabilities to consumers for some time, the Internet sites have created new avenues for direct bookings by consumers. Moreover, several of the airline websites offer consumers discount fares that are not available through other distribution channels. Some industry experts believe that the Internet will in time significantly reduce the importance of CRSs.

Another development—electronic ticketing—has made direct bookings by consumers more attractive and economical for both travellers and airlines. Travellers using electronic tickets no longer need paper tickets. Before the development of electronic ticketing, travellers making bookings electronically still needed to obtain a ticket either by mail or in person from a travel agent, an airline sales office, or the check-in counter at the airport. The need to obtain a paper ticket limited the efficiency advantages for consumers—and airlines—of making bookings electronically.

In addition, several new low-cost airlines began operations without participating in any CRS. Those airlines believed that avoiding CRS participation—and the payment of booking fees—would help lower their distribution costs and thereby improve their ability to offer fares lower than those offered by the more established airlines, which relied on travel agencies and CRSs for distributing their services. The low-cost airlines' strategy of avoiding CRS participation initially suggested that airlines might be able to develop alternative distribution methods that might discipline the prices and quality of service offered by the systems. However, this may not occur. Some of these low-cost airlines—Western Pacific and ValuJet, for example—have announced plans to make their services available through CRSs, and other low-cost airlines—Reno and Frontier, for example—have always relied on CRS participation in their marketing.

**Regulatory Developments Since Our Adoption of Revised Rules**

In view of the continuing changes in the CRS business and airline marketing practices and of requests by some airline and travel agency firms for further revisions in our rules, we began a study of CRSs and airline marketing. Order 94–9–35 (September 26, 1994). We intend to complete the study later this year and to use it as a basis for our analysis of the issues in this proceeding. We will place a copy of the study in the docket for this rulemaking when we publish it.

We have begun two rulemakings on specific CRS issues. We have proposed a rule prohibiting each system from imposing contract terms on participating airlines that require an airline to participate in a system at at least as high a level as the airline participates in any other system. We tentatively concluded that such ''parity'' clauses unreasonably reduce competition in the CRS and airline industries. We asked, however, whether we should allow a system to enforce such a clause against an airline that owns or markets a competing system. 61 FR 42197 (August 14, 1996).

We also proposed revisions to our rules on CRS displays to promote airline competition and ensure that travel agents and their customers can obtain a reasonable display of airline services. Our proposals would require each system to offer at least one display without an on-line preference, require every display to be based on criteria rationally related to consumer preferences, and bar systems from creating displays that neither use elapsed time as a significant factor in selecting flights from the database nor give single-plane flights a preference over connecting flights in ranking flights. 61 FR 42208 (August 14, 1996).

We have been analyzing the comments filed in response to these two notices of proposed rulemaking and intend to issue a final decision soon in those two rulemakings.

In addition, pending before us is an enforcement proceeding resulting from a third-party complaint filed by Northwest against American and Sabre Travel Information Network. Docket OST–95–430. The case involves American's distribution to Sabre travel agencies of a program developed by Sabre that causes American flights to be given a preferential display position. Northwest and our enforcement office argue that American's distribution of this program violates our CRS rules and 49 U.S.C. 41712 and have asked us to reverse an administrative law judge's decision that held that American's conduct was lawful.

We are aware that other CRS practices trouble many airlines and travel agencies and some CRS firms. For example, a number of airlines object to the continuing increases in booking fees and the airlines' inability to exert any check on those increases. A related matter concerns the dispute between some participating airlines and one or more systems over the systems' imposition of booking fees on transactions that participating airlines believe are of no benefit to them. See, *e.g., Travel Distribution Report* (April 24, 1997), at 1. Many travel agencies and some systems believe that the airline owners of some systems unfairly tie an agency's access to attractive discount fares offered by the airline to the agency's subscription to the airline's CRS. The growth of Internet booking sites has led to requests that we extend the coverage of at least some of our rules to such booking sites. See, *e.g.,* the comments filed by Amadeus in the parity clause rulemaking docket, Docket OST–96–1145. In addition, American and TWA have filed petitions for a rule prohibiting the multiple listing of a single flight under different airline codes as a result of code-sharing agreements. Dockets 49620 and 49622.

**Request for Comments**

We are issuing this advance notice of proposed rulemaking to invite comments on whether we should readopt the rules and, if so, with which changes. Despite the developments in airline distribution and the CRS business, we tentatively believe that each of the systems continues to have market power over airline participants and that the terms of airline participation are not affected by market forces. See, *e.g.,* 61 FR at 42198. As in our last major CRS rulemaking, the principal statutory authority for this rulemaking is 49 U.S.C. 41712, which authorizes us to define and prohibit unfair methods of competition and unfair and deceptive practices in air transportation and the marketing of air transportation.

We will examine whether the regulation of CRS operations remains necessary. We also intend to review whether our rules have been effective in promoting competition in the airline and CRS businesses and in enabling consumers and their travel agents to obtain accurate and complete information and, if not, why not and whether they can be revised to make them effective.

In determining which, if any, CRS rules should be adopted, we intend to focus as much as possible on rule proposals that will increase competitive market forces in the CRS industry rather than on proposals for detailed regulation of CRS practices. We took this approach in our last major CRS rulemaking. See, *e.g.,* 57 FR at 43781.

We ask the commenters to address the following issues:

1. Should the rules be continued? If so, for how long? Should another review be required and, if so, when? Commenters who recommend that the rules should not be continued should address the consequences of that recommendation on airlines, competition among the systems, travel agencies, and the public.

2. Have the rules been effective? Are the rules adequate and appropriate in light of technological changes, changes in business conditions in the airline and travel industries, and the rise of Internet and on-line computer services that enable consumers to make bookings?

3. In those areas where commenters believe that the rules have not been effective, should provisions be deleted or modified and, if modified, how? Commenters should address how the rules have been effective or ineffective in detail.

4. Do the changes in ownership of the systems (all now have multiple owners and at least one is owned in part by the public) require changes in our approach to regulation or in individual rules? Should we reexamine our jurisdictional and analytical bases for regulating CRSs, which rely on the ownership of each system by one or more airlines and airline affiliates? Do the decisions by some airline owners to reduce their CRS ownership interests indicate that there is less need for CRS regulation?

5. Have the rules allowing travel agencies to use third-party hardware and software and to use terminals not owned by a system to access other travel databases had any impact? Should the rules be changed to make it easier for travel agencies to use third-party hardware and software and to access other databases? For example, should the exception allowing vendors to restrict the use of vendor-owned equipment be eliminated? Do one or more dominant airlines affiliated with a CRS use their market power in any regional airline market to deter or block agencies from exercising their rights under these rules? Do systems otherwise impose contract terms that unreasonably deter agencies from acquiring their own equipment or otherwise using multiple databases or systems?

6. Does the mandatory participation rule (section 255.7) strengthen or weaken competition in the airline and

CRS businesses? Should the rule be modified to create areas where airlines with CRS ownership interests would have some ability to choose which services to buy from other systems? Should the rule instead be extended to cover airlines that market a system? Should the rule be extended to include matters like access to corporate discount fares?

7. In the parity clause rulemaking, Delta Air Lines has contended that we should bar systems from requiring participation in the booking services offered through Internet sites as a condition to participation in the services offered travel agency subscribers. What impact would Delta's proposal have on airline and CRS competition? Does the use of CRSs as booking engines by many Internet websites raise other issues that should be addressed in the rules?

8. Do the systems' display algorithms injure airline competition and, if so, how? If so, how could we prevent those injuries without engaging in a detailed regulation of the systems' criteria for editing and ranking their displays?

9. Does our rule requiring each system to make available to participating airlines all of the marketing and booking data generated by the system from bookings (section 255.10) benefit airline competition? Are system owners or other airlines using the data in ways that may prejudice airline competition? If so, how should the rule be changed?

10. We adopted a rule that generally requires each system to make available to participating airlines the same functionality used by its owner airlines (section 255.5). Has this rule been effective? Are there any remaining significant differences in functionality that affect airline competition?

11. Should we address the issues of booking fee levels and the structure of booking fees? If so, is there a practicable method for regulating the level of booking fees? Is there a way to bring market forces to bear on the terms on which airlines participate in CRSs?

12. Do the systems inappropriately charge airlines for agency transactions that are unnecessary or valueless for airline participants? Do the systems use subscriber contract terms, such as productivity pricing, that may encourage unnecessary transactions by some agencies and lead to increased booking fee costs for airline participants? If such problems exist, should we adopt rules in this area? Parties commenting on this issue should explain why airlines can or cannot stop illegitimate or unnecessary travel agency transactions by taking action against travel agencies that choose to conduct such transactions.

13. In the past we have reasoned that promoting the systems' competition for subscribers should usually promote airline competition, although increased competition for subscribers may lead to increased CRS costs for participating airlines. Does such competition among the systems benefit airline participants? Do systems use subscriber contract terms that adversely affect competition in the CRS or airline industries? If so, how could the rules be changed to eliminate such adverse effects?

14. Some industry participants have asserted that some of the major airlines with CRS ownership interests coerce travel agencies at their hubs into using their systems and thereby unreasonably limit competition in both the CRS and airline industries. Are these assertions true? If they are, are there any practicable rules that could be adopted that would limit or eliminate such practices?

15. The overseas marketing efforts of some CRSs have been frustrated by discriminatory conduct by foreign airlines and other travel suppliers that own or market a competing CRS in their home countries. Section 255.11(b) of our rules already exempts a CRS from complying with certain rule requirements in response to some types of discriminatory conduct by a foreign CRS. Should our rules be revised to strengthen a U.S. system's ability to take countermeasures against such discrimination?

We will, of course, consider all of the factual and legal issues presented by the commenters that relate to our decision on whether to readopt or revise the rules. We do not intend our list of questions to foreclose commenters from raising other issues, and we will consider all proposals suggested by the parties in this proceeding.

We anticipate that some parties will urge us to extend the coverage of at least some of our CRS rules to airline information and booking services available to consumers through the Internet. If such requests are made, the parties should discuss them in light of the differences between the way CRSs and Internet services are typically used by consumers. While consumers can directly use Internet sites, consumers relying on travel agencies for information and advice do not see the CRS displays used by the travel agent. Travel agencies hold themselves out as unbiased sources of information, while many websites do not. In finding a need for CRS regulation we have cited such factors as the usual practice of travel agencies of using only one system, the difficulties for travel agencies of switching systems or using more than one system, and the time pressures on travel agents that tend to cause them to book one of the first flights shown on a display, even if flights displayed later may better suit the traveller's needs. 57 Fed. Reg. at 43783, 43785–43786. These factors seem unlikely to be true for consumer use of Internet booking sites. Parties who want us to regulate Internet services, whether or not they exclude sites created by a single airline, should explain why we should take such action, given these differences. Parties who object to such proposals should also address these differences and any other relevant differences between CRSs and Internet booking sites.

Similarly, parties arguing that our rules should either be cut back or extended to Internet sites in order to equalize the competitive burden should explain why the regulations governing CRSs used by travel agencies place the systems at a competitive disadvantage compared to booking services offered through the Internet.

We plan to resolve the issues presented by our notices of proposed rulemaking on parity clauses, Docket OST–96–1145, and on CRS displays, Docket OST–96–1639, in those proceedings. We are aware, of course, that the commenters on those proposals have asserted that we should adopt additional rules that were not proposed in our notices of proposed rulemaking, such as, for example, possible changes to the mandatory participation rule. Those rule proposals should be raised in this proceeding.

In addition, any party that wishes to propose rules affecting the display of code-sharing services is free to do so in this docket.

Finally, we do not intend to consider in this proceeding air transportation issues that are not closely related to CRS practices. While our major goal in regulating CRS practices has been the promotion of airline competition, we will not consider all airline competition issues in this docket. As a result, we do not plan to focus in this proceeding on such issues as the competitive effects of override commissions or code-sharing, notwithstanding the potential importance of those issues.

**Timetable for Proceeding**

As noted above, our current rules will expire on December 31, 1997, if we do not extend them before that expiration date. Given the time required for completing this rulemaking, including the need to give parties an adequate opportunity to file comments and reply comments in response to this notice and

to our future notice of proposed rulemaking, we will not be able to complete this rulemaking by the current expiration date of our rules. We therefore intend to issue a notice of proposed rulemaking to extend the existing rules while we complete this rulemaking.

We currently intend to complete our pending study of the CRS business and airline marketing practices before we issue a notice of proposed rulemaking in this proceeding. We note that we followed a similar procedure in our last major CRS rulemaking.

**Regulatory Process Matters**

*Regulatory Assessment*

Our CRS rules were a significant regulatory action under section 3(f) of Executive Order 12866 and were reviewed by the Office of Management and Budget under that order. As required by section 6(a)(3) of that Executive Order, we prepared an assessment of the rules' costs and benefits. The rules were also significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

At this point, we do not know whether we will propose new rules that would have a substantial impact and would thus be considered significant under the Executive Order.

The comments submitted in response to this notice should address the potential effects any changes would have on the economy, costs or prices for consumers and the government, and adverse effects on competition.

We do not expect that this rulemaking will impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

*Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies.

Any rules adopted by us regulating CRS operations are likely to affect the operations of many small entities, primarily travel agencies, even though they would not be regulated directly if we readopted the existing rules. When we publish a notice of proposed rulemaking in this proceeding, we will include an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act.

That act also requires each agency to periodically review rules which have a significant economic impact upon a substantial number of small entities. 5 U.S.C. 610. This rulemaking will constitute the required review of our CRS rules.

*Paperwork Reduction Act*

The current rules contain no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law No. 96–511, 44 U.S.C. Chapter 35. See 57 F.R. at 43834.

*Federalism Implications*

This request for comments will have no 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 12812, we have determined that it does not present sufficient federalism implications to warrant preparation of a Federalism Assessment.

**List of Subjects in 14 CFR Part 255**

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Issued in Washington, DC on August 28, 1997.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 97–23944 Filed 9–9–97; 8:45 am]

BILLING CODE 4910–62–P

---

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 922

**[Docket No. 970404078–7078–01]**

**RIN 0648–AE41**

## Proposed Thunder Bay National Marine Sanctuary

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The National Oceanic and Atmospheric Administration's Sanctuaries and Reserves Division (NOAA/SRD) issued a proposed rule on June 23, 1997 (62 FR 33768) to designate an approximately 808 square-mile area of Great Lakes waters on Lake Huron, Michigan, over and surrounding Thunder Bay, and the submerged lands thereunder, off the northeastern coast of the State of Michigan, as a National Marine Sanctuary. The original public comment period on this proposal was to close on September 22, 1997. During July 1997, representatives of a variety of interests in the communities adjoining the proposal area formed a group to work with NOAA and the State of Michigan on completion of the process to consider the designation of Thunder Bay as a National Marine Sanctuary. Those communities requested additional time to review the proposal and to develop recommendations for NOAA and the State. On July 23, 1997, NOAA extended the public comment period through October 31, 1997 (62 FR 39494). Pursuant to requests from community representatives, a Sanctuary Advisory Council (SAC) has been established to facilitate public review and discussion of the proposal, and to make written recommendations to NOAA and the State of Michigan regarding various alternatives, and other comments on the Draft Environmental Impact Statement/Draft Management Plan by October 3, 1997. The SAC conducted its first meeting on August 26, 1997, and has recommended an additional extension to the comment period, to allow time for completion of the SAC's responsibilities. NOAA has adopted this recommendation. This notice extends the comment period through November 14, 1997.

**DATES:** Comments on the DEIS/DMP must be received by November 14, 1997.

**ADDRESSES:** Written comments should be sent to Ellen L. Brody, On-Site Liaison, Thunder Bay Project, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, Great Lakes Environmental Research Laboratory (GLERL), 2205 Commonwealth Boulevard, Ann Arbor, Michigan 48105–2945. Comments will be available for public inspection at the GLERL offices.

**FOR FURTHER INFORMATION CONTACT:** Karen Brubeck at (616) 526–8434, Ellen Brody at (313) 741–2270, or Sherrard Foster at (301) 713–3137, ext. 151.

Dated: September 4, 1997.

**Nancy Foster,**

*Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 97–23982 Filed 9–9–97; 8:45 am]

**BILLING CODE 3510–08–M**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1, 30, 33 and 190

### Distribution of Risk Disclosure Statements by Futures Commission Merchants and Introducing Brokers

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is proposing to amend its Rule 1.55 in order that futures commission merchants (''FCMs'') or introducing brokers (''IBs'') would no longer be required to furnish the specified written risk disclosure statement to certain categories of financially accredited customers or to obtain from these customers written acknowledgments of receipt of the risk disclosure statement before opening a commodity futures account for such customers. In addition, the Commission is proposing amendments to relieve FCMs and IBs from requirements to furnish disclosure statements to these customers pursuant to Rule 30.6(a) (risk disclosure pertaining to foreign futures or foreign options), Rule 33.7(a) (risk disclosure pertaining to domestic exchange-traded commodity options), Rule 1.65(a)(3) (risk disclosure for customers whose accounts are transferred other than at the customer's request to another FCM or IB) and Rule 190.10(c) (disclosure pertaining to treatment in bankruptcy of non-cash margin held by an FCM).

**DATES:** Comments must be received on or before November 10, 1997.

**ADDRESSES:** Comments on the proposed amendments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5221, or by electronic mail to secretary@cftc.gov. Reference should be made to ''FCM/IB Risk Disclosure Amendments.''

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Joseph, Attorney-Adviser, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington DC 20581. Telephone (202) 418–5450.

**SUPPLEMENTARY INFORMATION:**

## I. Background

CFTC rules require FCMs and IBs to provide customers with Commission-approved disclosure statements describing the risks of trading in domestic (and, as applicable, foreign) commodity futures and options and to receive written acknowledgment of receipt of such statements prior to opening an account for the customer.[1] In addition, Commission Rule 190.10(c) requires an FCM to provide a customer with a disclosure statement concerning the treatment in bankruptcy of any non-cash property deposited as margin at the FCM by a customer before the FCM may accept non-cash property from the customer to margin, guarantee or secure any commodity contract.[2]

In 1993 and 1994, the Commission amended its rules to simplify these disclosure requirements, reduce the potential for duplicative disclosure requirements and ease administrative burdens on FCMs and IBs without sacrificing the important customer protection purposes served by these regulations. In this regard, the Commission adopted amendments to consolidate the risk disclosures required by Rules 1.55(a) and 30.6(a) into a single, generic statement set forth in CFTC Rule 1.55(b) satisfying risk disclosure obligations with respect to domestic futures transactions and foreign futures and options transactions.[3] In addition, the Commission amended its rules to include the generic risk disclosure statement set forth in Appendix A to CFTC Rule 1.55, which may be used to satisfy the risk disclosure obligations under Commission Rules 1.55(a), 30.6(a) and 33.7(a) for domestic futures and commodity options transactions, foreign futures and commodity options transactions and the CFTC Rule 190.10 disclosure concerning non-cash property used to margin futures transactions, as well as to satisfy the risk disclosure requirements of certain foreign jurisdictions.[4]

When adopting the generic risk disclosure statement set forth in Appendix A to Rule 1.55 and the related rule amendments, the Commission noted that one commenter on the proposed rule amendments had suggested that the Commission eliminate the requirement of receipt of a written acknowledgment of disclosure with respect to sophisticated investors.[5] The Commission determined not to address the issues raised by that comment at that time. However, since adopting the Rule 1.55 Appendix A risk disclosure statement, the Commission has assessed the results of efforts in other contexts to reduce disclosure requirements and other regulatory burdens on Commission registrants without undermining consumer protection safeguards. For example, the Commission has acquired substantial experience with the simplified disclosure regime for sophisticated commodity pool investors and clients of commodity trading advisors (''CTAs'') established in 1992 in Rule 4.7.[6] Under Rule 4.7, CPOs offering pool participations to qualified participants and CTAs offering managed account programs to qualifying clients may be exempted from the requirement to deliver a disclosure document containing the disclosures specified in Rules 4.24 and 4.25 for CPOs and 4.34 and 4.35 for CTAs. However, they remain subject to statutory and regulatory antifraud prohibitions and

[1] See Rule 1.55(a) (risk disclosure requirement concerning trading domestic commodity futures); rule 30.6(a) (risk disclosure requirement concerning non-United States commodity futures or options contracts); and rule 33.7(a) (risk disclosure requirement concerning domestic, exchange-traded commodity options).

[2] Commission rule 190.10 does not require an FCM to obtain a customer's written acknowledgment of receipt of this statement.

[3] *See* 58 FR 17495 (April 5, 1993) (amending rules to consolidate foreign futures and foreign commodity options risk disclosure statement required by Rule 30.6(a) with the domestic futures risk disclosure statement required by Rule 1.55(a)).

[4] *See* 59 FR 34376 (July 5, 1994) (amending rules so that single risk disclosure statement set forth in Appendix A of Rule 1.55 would satisfy risk disclosure obligations under Rules 1.55(a), 30.6(a) and 33.7(a) as well as disclosure required pursuant to Rule 190.10(c)). The risk disclosure statement set forth at Appendix A to Rule 1.55 also fulfills risk disclosure requirements in the United Kingdom and Ireland for certain specified instruments. The rules proposed herein would not alter an FCM's or IB's disclosure obligations under the laws or regulations of any foreign jurisdiction. Further, as the Commission has previously emphasized, compliance with the risk disclosure obligations specified in CFTC Rules 1.55, 30.6 and 33.7 does not relieve FCMs and IBs of obligations under the Commodity Exchange Act (''Act''), state and common law, or Commission rule 1.55(f) to disclose to customers all material information concerning a transaction. *See, e.g., it.* at 34378. Nor does compliance with these Commission rules fulfill individual exchange particularized risk disclosure requirements related to linkage arrangement and other special products.

[5] *Id.* at 34378.

[6] Rule 4.7 became effective September 8, 1992. 57 FR 34853 (August 7, 1992) (adopting release for Rule 4.7). Among other things, Rule 4.7 relieves commodity pool operators (''CPOs'') and CTAs from most specified reporting and disclosure obligations, including risk disclosure obligations, with respect to certain qualified eligible participants (''QEPs) in rule 4.7 pools or qualified eligible clients (''QECs'') of a CTA, as defined in the rule.

are thus required to disclose all material information. In addition, the Commission has been able to assess more fully its previous efforts to consolidate and simplify risk disclosure obligations for FCMs and IBs. Based upon this experience, the Commission believes that it is appropriate to provide FCMs and IBs with relief from certain risk disclosure and bankruptcy statement requirements in the context of accounts for specified sophisticated customers and is thus proposing these rule amendments.

## II. Discussion

The amendments proposed herein would eliminate the requirement that FCMs and IBs provide specified, financially accredited customers with the Commission-mandated risk disclosure statements pursuant to CFTC Rules 1.55(a), 1.65(a)(3), 30.6(a), and 33.7(a) and obtain from such customers a written acknowledgment of receipt of the risk disclosure statement before opening a commodity futures or options account for such customers. Additionally, the amendments would relieve FCMs of the obligation to furnish these financially accredited customers with the bankruptcy disclosure statement required by Rule 190.10(c) before accepting non-cash property from such customers to margin a futures contract. While the proposed amendments would relieve an FCM or IB of the specific disclosure obligations discussed above in connection with futures or options transactions by specified customers, these amendments make clear that an FCM and IB would remain obligated to provide such customers with all disclosures that are material in light of the circumstances of the transaction in question. Under the proposed amendments, FCMs or IBs would remain free to provide customers specified in proposed Rule 1.55(f) with the Commission-approved risk and bankruptcy disclosure statements without obtaining a written acknowledgment of receipt of these statements from such qualified customers.

### *A. Customers For Whom Relief May Be Claimed*

The categories of customers specified in proposed Rule 1.55(f) for whom an FCM or IB may claim the relief proposed herein are based substantially upon the categories of eligible swap participants in Part 35 of the Commission rules [7] and eligible participants in Part 36 of the Commission rules.[8] The Commission believes that the definitions of eligible swap participants and eligible part 36 participants are appropriate models for the definitions set forth in proposed Rule 1.55(f) inasmuch as the Part 35 and 36 rules exempt parties from providing mandatory risk disclosure statements (as well as compliance with other requirements) in connection with transactions covered by those rules.[9] However, certain minor differences between the proposed categories of qualified customers in proposed Rule 1.55(f) and the lists of eligible swap participants and eligible participants in parts 35 and 36, respectively, exist.

First, proposed Rule 1.55(f) does not require a pool to have a minimum asset level in order to qualify for the proposed relief. Such a minimum asset test for pools is unnecessary in light of current Rule 1.55,[10] which already relieves an FCM or IB from the obligation to provide a Rule 1.55 risk disclosure statement to a commodity pool operated by a CPO registered under the Act or exempt from such registration.[11] The Commission believes that it is appropriate to extend this relief to the comparable risk disclosure obligations set forth in CFTC Rules 1.65(a)(3), 30.6(a), 33.7(a) and 190.10(c). In addition, proposed new Rule 1.55(f) (unlike Parts 35 and 36) would not restrict relief to entities not formed for the specific purpose of eligibility for the relief, since it is highly unlikely that any entity would be formed specifically for the purpose of avoiding receipt of a risk disclosure statement.

As under Parts 35 and 36, an investment company for which the proposed relief may be claimed is defined as one ''subject to regulation under the Investment Company Act.'' This provision will permit FCMs and IBs to apply the proposed relief to hedge funds which, although subject to the Investment Company Act, generally are not regulated under it.[12] Similarly, proposed Rule 1.55(f)(10) would allow an FCM or IB to claim relief with respect to a customer who is a ''futures commission merchant * * * subject to regulation under the Act.'' Thus, FCMs exempt from registration pursuant to Commission Rule 3.10(c) would nonetheless be qualifying customers within the meaning of proposed Rule 1.55(f)(10) since such FCMs remain subject to regulation under the Act.[13]

The categories of customers for whom an FCM or IB would be able to claim the proposed disclosure relief include: (1) Regulated financial intermediaries, such as banks, trust companies, savings associations, credit unions, and insurance companies; (2) registered securities and futures entities, such as broker-dealers regulated under the Securities Exchange Act of 1934, investment companies with assets exceeding $5,000,000 and subject to regulation under the Investment Company Act, pools formed and operated by a CPO registered under the Act or exempt from such registration, and FCMs, floor brokers or floor traders regulated under the Act; (3) other financially sophisticated persons, such as employee benefit plans with assets in

[7] See CFTC Rule 35.1(b)(2). Part 35 of the Commission rules exempts certain swap agreements from most provisions of the Act and Commission rules.

[8] See CFTC Rule 36.1(c)(2). Part 36 of the Commission rules exempts certain contract market transactions from specified provisions of the Act and Commission regulations thereunder. Parts 35 and 36 of the Commission rules were adopted pursuant to authority set forth in Section 4(c) of the Act, 7 U.S.C. 6(c). *See* 58 FR 5587 (January 22, 1993) (adopting part 35) and 60 FR 51323 (October 2, 1995) (adopting part 36). Section 4(c)(2) of the Act, 7 U.S.C. 6(c)(2), requires that, among other conditions, any agreement, contract or transaction exempted from any provision of the Act pursuant to Section 4(c) of the Act must ''be entered into solely between appropriate persons,'' who are defined in Section 4(c)(3) (A) through (J) of the Act, 7 U.S.C. 6(c)(3) (A)–(J). Thus, the lists of eligible swap participants and eligible participants were, in turn modeled closely on the list of appropriate persons provided in Section 4(c) of the Act.

[9] Part 35 exempts any eligible swap transaction from all provisions of the Act, except Sections 2(a)(1)(B), 4b, and 4o of the Act, 7 U.S.C. 2a, 6b, and 6o, Rule 32.9 and Sections 6(c) and 9(a)(2) of the Act, 7 U.S.C. 9 and 13(a)(2), to the extent these provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market. Rule 36.7 relieves an FCM or IB from the requirement to provide an eligible participant with a risk disclosure statement pursuant to Commission Rules 1.55, 1.65, 33.7 or 190.10 in connection with Section 4(c) contract market transactions as defined in Rule 36.1(c)(1).

[10] *See* CFTC Rule 1.55(a)(1)(iii).

[11] Commmission Rule 4.13 exempts a party from registration as a CPO where: (1) the pool operator receives no compensation for operating the pool, other than reimbursement of administrative expenses, operates only one pool, is not otherwise required to register under the Act and is not affiliated with any person required to register under the Act, and no person involved with the pool advertises in connection with the pool; or (2) the total gross capital contributions for all pools a person operates or intends to operate do not exceed $200,000, and none of the pools operated by such person has more than 15 participants at any time. Persons who wish to claim registration relief under Rule 4.13 must file a statement of intent with the Commission before accepting funds or soliciting customers for any pool operated by it and fulfill other requirements specified in the rule.

[12] *Cf.* 60 FR at 51329–51330 (discussing ''subject to regulation'' criteria as applied to investment companies in definition of eligible participants in Part 36 and eligible swap participants in Part 35).

[13] Rule 3.10(c) exempts from registration an FCM which is ''trading solely for proprietary accounts, as defined in [Commission Rule] 1.3(y) * * *.'' Rule 3.10(c) states that such FCMs, although exempt from registration, remain ''subject to all other provisions of the Act, and of the rules, regulations and orders thereunder.''

excess of $5,000,000 and subject to the Employee Retirement Income Security Act of 1974, corporations, partnerships, proprietorships and other entities with total assets exceeding $10,000,000 or a net worth of at least $1,000,000, and natural persons with assets in excess of $10,000,000; and (4) any governmental entity, including the United States, any state or foreign government, or any political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency or department of any of the foregoing.

Like the definitions of Part 35 eligible swap participant and Part 36 eligible participant, the categories of customers specified in proposed Rule 1.55(f) would include certain regulated foreign entities that perform roles or functions similar to those performed by one of the enumerated, regulated United States entities. These foreign entities must satisfy the same minimum asset or net worth criteria as their United States counterparts and, although not required to be subject to regulation under specified United States laws, they must be subject to regulation in their home jurisdiction.[14] Thus, an FCM or IB would be able to claim the proposed relief in connection with opening a futures or commodity option account for a foreign employee benefit plan subject to applicable foreign regulations, a commodity pool operated by a foreign person performing a function similar to that of a CPO and subject to foreign regulation as such, or a foreign-regulated entity performing a function similar to that of a United States investment company, broker-dealer, FCM, floor broker or floor trader, if such customers satisfy applicable minimum asset or net worth criteria.

As proposed, these amendments require that a customer satisfy the criteria set forth in proposed Rule 1.55(f) only at the time an account is opened. An FCM or IB would be under no obligation to monitor a customer's status to assure that the customer continues to satisfy the Rule 1.55(f) criteria throughout the time an account remains open. Moreover, the proposed amendment to Rule 1.65(a)(3), which addresses accounts transferred other than at a customer's request, allows the FCM or IB to whom such an account is transferred to claim the proposed disclosure relief with respect to a customer who either: (1) as clearly evidenced by information available to the transferee firm, satisfied the proposed 1.55(f) criteria at the time the account was first opened with the transferring FCM or IB; or (2) satisfies such criteria at the time the account is transferred.

Proposed Rule 1.55(f) will provide FCMs and IBs with clear, objective criteria for identifying the customers to whom delivery of the Commission-approved disclosure statements pursuant to CFTC Rules 1.55(a), 1.65(a)(3), 30.6(a), 33.7(a) and 190.10(c) is not required. These criteria should serve to minimize any administrative burdens associated with implementing the proposed relief. In this regard, the Commission notes that the proposed rule contains no specific requirement that FCMs and IBs maintain with their books and records any information in addition to that already required by other Commission rules in order to identify a particular customer's eligibility for the relief provided by the proposed amendments.[15] However, FCMs and IBs are required to assure that mandated disclosure statements are provided to customers other than those to whom this relief applies. In order to substantiate compliance with such disclosure requirements and exercise meaningful supervision over customer accounts, FCMs and IBs should assure that adequate records are maintained and reviewed on a regular basis.[16] Thus, FCMs and IBs should maintain documentation relevant to the qualifications of the customers for whom the relief proposed herein will be claimed and to confirm the identities of customers to whom specified risk disclosures have been made and from whom acknowledgments have been obtained.

*B. Relief*

The proposed amendments will relieve FCMs and IBs from the requirements to deliver disclosure statements pursuant to Commission Rules 1.55(a), 1.65(a)(3), 30.6(a), and 33.7(a) to customers who, at the time of account opening, are within the categories specified in proposed Rule 1.55(f).[17] FCMs and IBs also would no longer be required to obtain and retain a signed statement from such customers acknowledging that the customer received and understood the required risk disclosure statement.

Further, the Commission believes that it is appropriate to relieve FCMs of the obligation to provide disclosure statements to these specified customers pursuant to Rule 190.10(c). However, the Commission requests comment concerning the proposed relief with respect to Rule 190.10(c), which requires that the disclosure statement specified therein be given only when customers deposit non-cash property as margin.[18] The Commission also notes that the proposed rule amendments do not provide FCMs with relief with respect to the subordination agreement required by Financial and Segregation Interpretation No. 12 to be executed by a customer whose funds are held by an FCM in foreign depositories, which may be incorporated in the Rule 190.10(c) bankruptcy statement.[19]

*C. Continuing Disclosure Obligations*

The proposed amendments make clear that despite relief from the specific disclosure obligations of CFTC Rules 1.55(a), 1.65(a)(3), 30.6(a), 33.7(a) or 190.10(c), FCMs and IBs remain obligated under other statutory and regulatory provisions, including Section 4b of the Act[20] and current CFTC Rule 1.55(f),[21] to provide customers with all material information relating to a transaction, including information relating to the risks involved in entering a particular transaction. As the Commission stated when it adopted current Rule 1.55(f), these minimum disclosure obligations arise under the Act, under state law and under common law.[22] However, the required

[14] In this regard, the Commission intends that the foreign entity be subject to regulation based upon activities or functions similar to those performed by a United States entity specified in proposed Rule 1.55(f). For example, to be within the meaning of proposed Rule 1.55(f)(10), the activities of a foreign FCM should be governed by regulations dealing with its business as an FCM and not by an unrelated regulatory regime.

[15] For example, FCMs and IBs would be required to obtain and maintain the information required by CFTC Rule 1.37 concerning all customers, including customers listed in proposed Rule 1.55(f).

[16] Rule 166.3 requires FCMs and IBs to supervise diligently the handling of commodity interest accounts.

[17] The Commission also proposes to redesignate current Rule 1.55(f) as 1.55(g).

[18] The commodity broker provisions of the Bankruptcy Code, which mandate *pro rata* distribution of cash and non-cash customer property, including property specifically identifiable to a customer, have been in effect for approximately nineteen years, and the Commission's bankruptcy rules for fourteen years.

[19] 53 FR 46911 (November 21, 1988) (stating conditions under which an FCM may hold funds of its United States domiciled customers in a foreign depository). The Commission has stated that the subordination agreement discussed in Financial and Segregation Interpretation No. 12 may be incorporated in the Rule 190.10(c) bankruptcy disclosure document or separately executed. *Id.* at 46914.

[20] 7 U.S.C. 6b.

[21] Current Commission Rule 1.55(f), which would be redesignated as Rule 1.55(g) under the proposed amendments, states that compliance with Rule 1.55 does not relieve an FCM or IB of any other disclosure obligations it may have under applicable law. *See* 50 FR 5380 (February 8, 1985) (adopting Rule 1.55(d), since redesignated as Rule 1.55(f), and explaining FCMs' and IBs' disclosure obligations under the Act).

[21] *Id.* at 5381. Further, as the Commission noted when it adopted Rule 1.55(d) ''the prescribed

disclosures may differ in particular cases, depending upon the nature of the relationship between the FCM or IB and its customer and such factors as whether the FCM or IB has discretionary authority over an account or is merely executing trades according to a customer's instructions.[23]

## III. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect FCMs and IBs. The Commission has already established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA. FCMs have been determined not to be small entities under the RFA.

With respect to IBs, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time. The proposed rule amendments would not require any IB to alter its current method of doing business. Instead the proposed amendments would provide IBs with relief from certain disclosure and recordkeeping requirements with respect to certain identified customers. Presumably, an IB would only choose to make use of such relief if it were cost-effective to do so. Further, these rule amendments as proposed should impose no additional burden or requirements on IBs and, thus, if adopted would not have a significant economic impact on a substantial number of IBs.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995[24] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act.

There is no burden associated with the proposed rule amendments to Rule 1.55 or Rule 1.65. While these proposed rule amendments have no burden, the group of rules (3038–0024) of which these rules are a part has the following burden:

Average burden hours per response 128
Number of Respondents 3,148
Frequency of response 36

Three OMB approved collections would be affected by the adoption of these proposed rule amendments. In compliance with the Paperwork Reduction Act, the Commission, through this rule proposal, solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. Three OMB approved collections would be affected by the adoption of this rule. These are:

3038–0007—Regulation of Domestic Exchange-Traded Commodity Options. The burden associated with collection 3038–0007, including this proposed rule, is as follows:

Average burden hours per response 50.57
Number of Respondents 190,422
Frequency of response 1,111

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response 0.08
Number of Respondents 175
Frequency of response 115

3038–0021—Regulations Governing Bankruptcies of Commodity Brokers. The burden associated with collection 3038–0021, including this proposed rule, is as follows:

Average burden hours per response 0.35
Number of Respondents 472
Frequency of response 34

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response 0.05
Number of Respondents 235
Frequency of response 8

3038–0035—Rules Relating to the Offer and Sale of Foreign Futures and Options. The burden associated with collection 3038–0035, including this proposed rule, is as follows:

Average burden hours per response 15.70
Number of Respondents 2,832
Frequency of response 48

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response 0.60
Number of Respondents 360
Frequency of response 4

Persons wishing to comment on the information which would be required by this proposed/amended rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, 202) 418–5160.

## List of Subjects

*17 CFR Part 1*

Customer protection, Risk disclosure statements, Commodity futures.

*17 CFR Part 30*

Foreign futures and options transactions, Customer protection, Risk disclosure statements.

*17 CFR Part 33*

Domestic exchange-traded commodity options transactions.

*17 CFR Part 190*

Bankruptcy.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4b, 4c, 4d, 4f, 4g and 8a of the Act, as amended, 7 U.S.C. 2, 6b, 6c, 6d, 6f, 6g and 12a, the Commission hereby proposes to amend Chapter I of title 17 of the Code of Federal Regulations as follows:

---

disclosure statement [of Rule 1.55] was not meant to be an exhaustive explanation of the mechanics and risks of futures trading or of particular transactions, but rather was designed to highlight some of the inherent risks of futures trading for new customers.'' *Id.* at 5382.

[22] *See, e.g., Yameen* v. *Madda Trading Company,* [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,125 (CFTC 1980) (FCM and its associated person (''AP'') breached duty to customer by not disclosing limitations of stop loss orders after having discussed favorable features of these orders); *Ruddy* v. *First Commodity Corp. of Boston,* [1980–1982 Transfer Binder] Comm. Fut L. Rep. (CCH) ¶21,435 (CFTC 1981) (FCM and AP breached duty to customer for whom they had discretionary authority by failing either to contact him promptly or to remove the hedges entered for him once the strategy under which the hedges had been recommended and placed and failed), *aff'd sub nom. First Commodity Corp. of Boston* v. *CFTC,* 676 F.2d 1 (1st Cir. 1982); *In the Matter of JCC, Inc.,* [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,080 (CFTC 1994) (omission and misrepresentation of material information about a trading program, including information concerning applicable fees and potential risks, violated antifraud provisions of Act), *aff'd sub nom. JCC, Inc.* v. *CFTC,* 63 F.3d 1557 (11th Cir. 1995).

[24] Pub. L. 104–13 (May 13, 1995).

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

**Authority:** 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

2. Section 1.55 is amended by revising paragraph (a)(1), by removing paragraph (a)(1)(iii), by redesignating paragraph (f) as paragraph (g), and by adding new paragraph (f) to read as follows:

### § 1.55 Distribution of ''Risk Disclosure Statement'' by futures commission merchants and introducing brokers.

(a)(1) Except as provided in § 1.65, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a commodity futures account for a customer, other than for a customer specified in paragraph (f) of this section, unless the futures commission merchant or introducing broker first:

* * * * *

(f) A futures commission merchant or, in the case of an introduced account an introducing broker, may open a commodity futures account for a customer without furnishing such customer the disclosure statements or obtaining the acknowledgments required under paragraph (a) of this section, § 1.65(a)(3), and § 30.6(a), § 33.7(a), and § 190.10(c) of this chapter, provided that the futures commission merchant or, in the case of an introduced account the introducing broker, provides such customer with such disclosure as is material in the circumstances and the customer is, at the time at which the account is opened:

(1) A bank or trust company;

(2) A savings association or credit union;

(3) An insurance company;

(4) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a–1, *et seq.*) or a foreign entity performing a similar role or function subject as such to foreign regulation, provided that such investment company has total assets exceeding $5,000,000;

(5) A pool operated by a commodity pool operator registered under the Commodity Exchange Act or exempt from such registration or by a foreign person performing a similar function to that of a commodity pool operator and subject as such to foreign regulation;

(6) A corporation, partnership, proprietorship, organization, trust, or other entity: (A) which has total assets exceeding $10,000,000; or (B) which has a net worth of $1,000,000;

(7) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974, or a foreign person performing a similar role or function and subject as such to foreign regulation, with total assets exceeding $5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1, *et seq.*), or a commodity trading advisor subject to regulation under the Commodity Exchange Act;

(8) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(9) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf: *provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of paragraphs (f)(6) or (f)(11) of this section;

(10) A futures commission merchant, floor broker, or floor trader subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function subject as such to foreign regulation; or

(11) Any natural person with total assets exceeding $10,000,000.

* * * * *

3. Section 1.65 is amended by redesignating paragraph (a)(3)(ii) as (a)(3)(iii) and adding new paragraph (a)(3)(ii) to read as follows:

### § 1.65 Notice of bulk transfers and disclosure obligations to customers.

(a) * * *

(3) * * *

(ii) As to customers for which the transferee futures commission merchant or introducing broker has clear evidence that such customer was at the time the account was opened by the transferring futures commission merchant or introducing broker, or is at the time the account is being transferred, a customer listed in section 1.55(f) of this chapter; or

* * * * *

## PART 30—FOREIGN FUTURES OR FOREIGN OPTIONS TRANSACTIONS

4. The authority citation for Part 30 continues to read:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

5. Section 30.6 is amended by revising paragraph (a) to read as follows:

### § 30.6 Disclosure.

(a) *Futures commission merchants and introducing brokers.* Except as provided in § 1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open a foreign futures or option account for a foreign futures or option customer, other than for a customer specified in § 1.55(f) of this chapter, unless the futures commission merchant or introducing broker first furnishes the customer with a separate written disclosure statement containing only the language set forth in § 1.55(b) of this chapter or as otherwise approved under § 1.55(c) of this chapter (except for nonsubstantive additions such as captions), which has been acknowledged in accordance with § 1.55 of this chapter; *Provided, however,* that the risk disclosure statement may be attached to other documents as the cover page or the first page of such documents and as the only material on such page.

* * * * *

## PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

6. The authority citation for Part 33 continues to read:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19, and 21, unless otherwise noted.

7. Section 33.7 is amended by revising paragraph (a)(1) to read as follows:

### § 33.7 Disclosure.

(a)(1) Except as provided in § 1.65 of this chapter, no futures commission merchant, or in the case of an introduced account no introducing broker, may open or cause the opening of a commodity option account for an option customer, other than for a customer specified in § 1.55(f) of this chapter, unless the futures commission merchant or introducing broker first:

* * * * *

## PART 190—BANKRUPTCY

8. The authority citation for Part 190 continues to read:

**Authority:** 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556 and 761–766, unless otherwise noted.

9. Section 190.10 is amended by revising paragraph (c)(1) to read as follows:

**§ 190.10 General.**

* * * * *

(c) *Disclosure statement for non-cash margin.* (1) Except as provided in § 1.65, no commodity broker (other than a clearing organization) may accept property other than cash from or for the account of a customer, other than a customer specified in § 1.55(f) of this chapter, to margin, guarantee, or secure a commodity contract unless the commodity broker first furnishes the customer with the disclosure statement set forth in paragraph (c)(2) of this section in boldface print in at least 10 point type which may be provided as either a separate, written document or incorporated into the customer agreement, or with another statement approved under § 1.55(c) of this chapter and set forth in appendix A to § 1.55 which the Commission finds satisfies this requirement.

* * * * *

Issued in Washington, DC on September 3, 1997 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–23882 Filed 9–9–97; 8:45 am]

BILLING CODE 6351–01–P

---

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 773

**RIN 1029–AB80**

## Notification and Permit Processing

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** After reviewing comments received during the public comment period, the Office of Surface Mining Reclamation and Enforcement (OSM) is withdrawing the proposed Notification and Permit Processing rule published in the **Federal Register** on October 26, 1994 (59 FR 53884).

**DATES:** This withdrawal is effective September 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Scott Boyce, 1951 Constitution Avenue, N.W., Washington, DC 20240; Telephone: (202) 208–2986 commercial or FTS. E-mail: sboyce@osmre.gov.

**SUPPLEMENTARY INFORMATION:** In a letter dated September 29, 1992, Mr. Jim B. Wyant of Vincennes, Indiana, presented a petition for rulemaking to OSM. The ''Notice of availability of a petition to initiate rulemaking and request for comment'' was published in the **Federal Register** on November 12, 1992 (57 FR 53670). On August 24, 1993 (58 FR 44630), the Director of OSM published his ''Notice of decision on petition for rulemaking'' and stated that OSM would initiate Federal rulemaking. The proposed rule was published in the **Federal Register** on October 26, 1994 (59 FR 53884), and would have revised the permit notification provisions of 30 CFR 773.15 and the permit processing provisions of 30 CFR 773.15(c) and 773.17. On December 23, 1994 (59 FR 66287), OSM extended the comment period for the proposed rule until February 27, 1995. In order to accommodate requests for a public hearing the comment period was reopened on March 10, 1995, and extended until March 23, 1995. A public hearing was held on March 16, 1995, in Vincennes, Indiana.

Comments on the proposed rulemaking reveal that there are no widespread problems with the existing rules that warrant a national rulemaking. Accordingly, the proposed rule published on October 26, 1994 (59 FR 53884), is withdrawn.

Dated: September 4, 1997.

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 97–23957 Filed 9–9–97; 8:45 am]

BILLING CODE 4310–05–M

---

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 870

**RIN 1029–AB93**

## Abandoned Mine Land Reclamation Fund Reauthorization Implementation

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is proposing to remove its regulation at 30 CFR 870.17. The regulation governs the scope of audits conducted in connection with OSM's abandoned mine land reclamation program.

**DATES:** *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m., Eastern time, on November 10, 1997.

*Public hearings:* Upon request, OSM will hold public hearings on the proposed rule at dates, times and locations to be announced in the **Federal Register** prior to the hearings. OSM will accept requests for public hearings until 5 p.m., Eastern time, on October 1, 1997. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under **FOR FURTHER CONTACT** before the hearing date to verify that the hearing will be held.

**ADDRESSES:** *Written comments:* Hand-deliver or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 117, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

*Electronic Mail:* You may send comments through the Internet to OSM's Administrative Record at: osmrules@osmre.gov. Copies of any messages received electronically will be filed with the Administrative Record.

*Public hearings:* You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.** The address, date and time for any public hearing held will be announced prior to the hearings. Any individual who requires special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** Jim Krawchyk, Division of Compliance Management, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15220. Telephone 412–921–2676. E-mail: jkrawchy@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule and Guidelines
IV. Procedural Matters

### I. Public Comment Procedures

*Written Comments:* Written or electronic comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than those listed above (see **ADDRESSES**), may not

be considered or included in the Administrative Record for the final rule.

*Public hearings:* OSM will hold a public hearing on the proposed rule upon request only. The time, date and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing should inform Mr. Krawchyk (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing, of the desired hearing location by 5:00 p.m., Eastern time, on October 1, 1997. If no one has contacted Mr. Krawchyk to express an interest in participating in a hearing by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. The hearing will be transcribed. To assist the transcriber and ensure an accurate record, OSM requests that each person who testifies at a hearing provide the transcriber with a written copy of his or her testimony. To assist us in preparing appropriate questions, we also request, if possible, that each person who plans to testify submit to us at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of his or her testimony.

## II. Background

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508. Included in that law was the Abandoned Mine Reclamation Act of 1990 (AMRA) which amended the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.* On May 31, 1994, OSM published final regulations in the **Federal Register** (59 FR 28136) implementing the provisions of AMRA. The final regulations included a version of 30 CFR 870.17 which specifies who may conduct audits and whose records may be examined. The revision, utilizing the authority in sections 201(c), 402(d)(2) and 413(a) of SMCRA, expanded the scope of section 870.17 to cover the records of all persons involved in a coal transaction, including permittees, operators, brokers, purchasers, and persons operating preparation plants and tipples, and any recipient of royalty payments from the coal mining operation.

In July 1994, the National Coal Association and the American Mining Congress, predecessor organizations of the National Mining Association (NMA), filed suit challenging the regulations promulgated by OSM, specifically the scope of 30 CFR 870.17. On July 23, 1996, In *National Mining Ass'n* v. *U.S. Department of the Interior,* No. 94–1642 (D.D.C.), the United States District Court for the District of Columbia ruled in favor of OSM. NMA appealed the district court's decision to the United States Court of Appeals for the District of Columbia. After the parties engaged in court-ordered mediation, the Department of Justice, upon OSM's request, filed a motion to hold the case in abeyance pending new rulemaking to resolve the issues in dispute and the U.S. Court of Appeals granted the motion.

On June 3, 1997, OSM published in the **Federal Register** a notice that it was suspending this rule (See 62 FR 30232). During the period of suspension, OSM continued to conduct audits of operators of surface coal mining operations, as necessary, under the provisions of section 402(d)(2) of SMCRA, and 30 CFR 870.16.

## III. Discussion of Proposed Rule

OSM is not proposing to move section 870.17. In the litigation discussed above, the NMA raised concerns over the scope of this regulation. The District Court upheld OSM's final rule and granted summary judgment in favor of defendants. While the District Court acknowledged that ''Section 1232(d)(2) does not provide authority for audits or inspections of those not directly regulated under SMCRA,'' it nevertheless upheld OSM's rule on the ground that the agency has authority under SMCRA's general rulemaking provisions to authorize ''broader audits and record inspections'' than those permitted by Section 1232(d)(2).

NMA claims that the court erred and appealed. The NMA states that both OSM and the District Court are required to give effect to Congress' clearly expressed intent to limit the Secretary's audit authority to persons already ''subject to'' Title IV of SMCRA—*i.e.,* coal mine operators. The NMA alleges further that SMCRA's general rulemaking provisions do not give OSM authority to assert audit jurisdiction broader in scope than that expressly provided for in the Act.

The NMA also alleges that OSM's interpretation contravenes the Fourth Amendment of the Constitution by subjecting persons other than surface coal mining operators to warrantless searches of ''all books, papers, and other documents.''

Although OSM does not agree with the arguments made by the NMA, it does recognize the serious nature of the issues raised. Given these concerns OSM is proposing to remove this specific rule. OSM does not believe that the removal will hinder its audit or collection efforts, however. OSM still possesses significant administrative authority, as well as the general audit authority in SMCRA section 402(d)(2), 30 U.S.C. 1232(d)(2), and 30 CFR 870.16 of the Secretary's regulations. OSM believes that Congress specifically directed the agency to ''conduct such audits of coal production and the payment of fees under [Title IV] as may be necessary to ensure full compliance with the provisions of this title.'' The agency will continue to carry out this legislative mandate.

## IV. Procedural Matters

*Paperwork Reduction Act*

This proposed rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

*Executive Order 12866*

This proposed rule is not a significant rule under the criteria of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

*Regulatory Flexibility Act*

The Department of the Interior pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* certifies this proposed rule will not have a significant economic effect on a substantial number of small entities for the same reason that the promulgation of the rule in 1994 did not have such an impact. The particular provision being suspended governs the scope of audits conducted by OSM and will have no economic impact on small entities.

*Executive Order 12988 on Civil Justice Reform*

The Department of the Interior has determined that this rule meets the requirements of sections (3)(a) and (3)(b)(2) of Executive Order 12988, Civil Justice Reform.

*Unfunded Mandates Reform Act*

The removal action will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

*National Environmental Policy Act*

This proposed rule has been reviewed by OSM, and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual 516 DM 2, Appendix 1.10.

Author: The principal author of this rule is Jim Krawchyk, Office of Surface Mining, U.S. Department of the Interior, 3 Parkway Center, Pittsburgh, PA 15220.

**List of Subjects in 30 CFR Part 870**

Incorporation by reference, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: September 4, 1997.

**Bob Armstrong,**

*Assistant Secretary for Land and Minerals Management.*

Accordingly, 30 CFR part 870 would be amended as set forth below.

## PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for Part 870 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

**§ 870.17 [Removed]**

2. Section 870.17 is removed.

[FR Doc. 97–23958 Filed 9–9–97; 8:45 am]

BILLING CODE 4310–05–M

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–5886–1]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Bowers Landfill Superfund Site from the national priorities list; request for comments.

**SUMMARY:** The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Bowers Landfill Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that all Fund-financed responses under CERCLA have been implemented and U.S. EPA, in consultation with the State of Ohio, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

**DATES:** Comments concerning the proposed deletion of the site from the NPL may be submitted on or before October 10, 1997.

**ADDRESSES:** Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: Pickaway County District Public Library 165 E. Main St., Circleville, OH 43113. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

**FOR FURTHER INFORMATION CONTACT:** Gladys Beard (SR–6J), Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Leo Rosales (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–6198.

**SUPPLEMENTARY INFORMATION:**

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

### I. Introduction

The U.S. Environmental Protection Agency (EPA) Region V announces its intent to delete the Bowers Landfill Site from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

### II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA considers, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

### III. Deletion Procedures

Upon determination that at least one of the criteria described in 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to

obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

## IV. Basis for Intended Site Deletion

Bowers Landfill is located in rural Pickaway County, Ohio, approximately 2.5 miles north of the City of Circleville. The site is just northwest of the intersection of Circleville-Florence Chapel Road and Island Road, on the east side of the Scioto River Valley. The landfill lies within the Scioto River floodplain, and its northwestern and southern most points abut the Scioto River. The north side of the landfill is bordered by an agricultural field. The field to the west of the landfill is now a wetlands area.

The landfill occupies about 12 acres of a 202-acre tract originally owned by the estate of Dr. John M. Bowers. Much of this tract is still owned by the Bowers' estate, but portions have been sold to other owners. The landfill was constructed as a berm approximately 3,500 feet long with an average width of 125 feet and a top height approximately 10 feet above grade. The reported waste volume of the landfill was approximately 130,000 cubic yards. Site records, although limited, indicated that some of the waste disposed in the landfill was hazardous. The landfill is no longer overtopped by flood waters. During construction, the height of the landfill was raised to prevent the overtopping of the landfill. The area around the landfill, including the field north of the landfill and the wetlands to the west are flooded several times per year. Drainage is still to the west and south towards the Scioto River.

The site area is rural, with 15 houses located within a ½ mile radius of the landfill. Houses in the area largely depended on private wells for water supply. No down gradient wells were within 1000 feet of the site. The City of Circleville's water supply wells are located about 1½ miles south of the site. The domestic wells have been sampled and no contamination has been found.

Dr. Bowers began operating the landfill in 1958. Little information is available on the types and quantities of wastes disposed of at Bowers Landfill. However, information from the Ohio Environmental Protection Agency (OEPA) files indicates that general domestic waste and industrial refuse, collected by private haulers in and around Circleville, account for most of the material in the landfill. Between 1963 and 1968, the site also received chemical wastes originating from local industries, including E.I. Du Pont de Nemours (Du pont) and Pittsburgh Plate Glass, Inc., now PPG Industries, Inc., (PPG). Du pont and PPG reported sending 6,000 and 1,700 tons of waste, respectively, to Bowers Landfill between 1965 and 1968. Both companies were considered potentially responsible parties (PRP) for contamination at the landfill. Waste disposal practices consisted largely of dumping waste directly onto the ground and covering it with soil. However, the southern end of the landfill may have been excavated for waste disposal. Waste also was burned at the site, but the extent and dates of waste burning were not known. Landfilling at the site ended around 1968. The site was not secured when landfilling ended, and the cover material of sand, gravel, and some topsoil was characterized as not sufficient during a 1971 inspection by the Pickaway County Health Department.

Between 1980 and 1982, U.S. EPA, OEPA and an engineering firm (Burgess & Niple, Limited, Columbus, Ohio) collected ground-water and surface water samples at Bowers Landfill. Results from these early samples showed that contaminants were being released from the landfill. Volatile organic compounds (VOC), including ethylbenzene, toluene, and xylene, were detected in monitoring wells and in surface water samples collected immediately west of the landfill. Groundwater concentrations as high as 86 mg/L (xylene) and surface water concentrations as high as 48 mg/L (toluene) were found. Based on these results, OEPA requested in 1982, that Bowers Landfill be placed on the National Priorities List (NPL) of Superfund sites, the site was proposed December 30, 1982, and the site was added to the NPL on September 8, 1983.

In 1985, U.S. EPA and OEPA signed a consent order with Du Pont and PPG, allowing the companies to conduct the remedial investigation (RI) and feasibility study (FS). After reviewing the results of these studies and of the endangerment assessment (EA), U.S. EPA issued a Record of Decision (ROD) for Bowers Landfill on March 31, 1989.

The U.S. EPA ROD selected capping of the landfill as the remedial action for Bowers Landfill. This action included six major components:

1. Removing surface debris and vegetation from the landfill.
2. Installing a low-permeability clay cover on the landfill.
3. Constructing erosion control measures and drainage improvements.
4. Restricting site access and use.
5. Maintaining the clay cover after construction.
6. Monitoring ground water and surface water.

In addition to the above components, a seventh component, a gas venting system was a part of the remedial design. The gas venting system was added to the remedial design because methane gas was detected during a pre-design soil gas survey at Bowers Landfill. U.S. EPA issued a work assignment to PRC (government contractors) on January 22, 1990, to perform the Remedial Design at the Bowers Landfill Site. The Design was completed in August 1991. PRC received the work assignment to perform the Remedial Action in September 1991. Remedial Action construction started in March 1992. As required by the ROD, the cover system for the Bowers Landfill was constructed to:

1. Minimize risk to public health and environmental from direct contact with contaminated material.
2. Minimize the migration of liquids through the closed landfill.
3. Minimize maintenance of the landfill site.
4. Promote drainage and minimize erosion of the cover.
5. Provide a maximum permeability of $1\times10-7$ cm/sec.

The first year of operation and maintenance (O&M) was overseen/conducted by U.S. EPA. The PRPs agreed to do the groundwater monitoring for the first year, with U. S. EPA's contractor, PRC, responsible for conducting the remaining tasks.

The specific tasks that were listed for the 30 years of operation and maintenance are as follows: (1) Gas monitoring, (2) ground and surface water monitoring, (3) maintenance of the landfill cap, (4) site inspections, and (5) repairs.

Beginning with the second year of O&M, the PRPs signed a consent decree with the State of Ohio in September 1996 to do all post-construction activities at the site. Early in the second year, the PRP's contractor abandoned Monitoring Well P15B. A bailer was caught at the bottom of the well. This well was replaced by Monitoring Well P15BR.

Groundwater sampling has been conducted on a quarterly basis. Gas monitoring has been done on a quarterly basis for methane and on a semi-annual basis for VOCs. Surface water is sampled a minimum of twice a year in the southern end of the ditch and once per year in each of the two wetlands ponds.

Based on the observations and inspections made during construction, the final survey data, photographic documentation, and quality assurance testing, PRC was able to certify that the landfill cover and all associated remedial construction had been completed in accordance with the design drawings and specifications, and is in compliance with the ROD signed by the Regional Administrator for Region 5 dated March 31, 1989.

Ground and surface water quality has not been diminished. No VOCs or semi-volatile organic compounds (SVOCs) have been detected in the first three sampling events of the second year of groundwater sampling. Barium continues to be detected in Monitoring Well P–5B, and sometime is above the MCL (maximum contaminant level). Nine downgradient monitoring wells contain one or more metals that are statistically significant.

Analytical data has been entered into the GRITS/STAT computer program and a statistical analysis was completed using a non-parametric analysis of variance (ANOVA) using the Kruskal-Wallace Test. Results from upgradient monitoring wells are compared to the results in downgradient monitoring wells to determine which downgradient wells show evidence of statistically significant levels of analytes.

The results of the comparison at Bowers Landfill indicated that several inorganic parameters are reported by GRITS/STAT as being statistically elevated with respect to background. Most of these parameters do not have primary MCLs. Barium has exceeded its MCL during some sampling events.

The nine monitoring wells with statistically significant sampling results have had comparable results in the past. No action is needed because no apparent threat exists.

There have been no significant surface water detections.

EPA, with concurrence from the State of Ohio, has determined that all appropriate Fund-financed responses under CERCLA at the Bowers Landfill Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, EPA proposes to delete the site from the NPL.

Dated: August 21, 1997.

**Michelle D. Jordan,**

*Acting Regional Administrator, U.S. EPA, Region V.*

[FR Doc. 97–23691 Filed 9–9–97; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register
Vol. 62, No. 175
Wednesday, September 10, 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

### Office of the Secretary

### Privacy Act of 1974; Revision of System of Records

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of revision of an existing Privacy Act system of records.

**SUMMARY:** Notice is hereby given that USDA proposes to redesignate its Privacy Act system of records, USDA/OFM–3, entitled ''Administrative Billings and Collections, USDA/OFM'' to USDA/OCFO–3, ''Administrative Billings and Collections, USDA/OCFO'' to reflect reorganization in the USDA; and to add a new routine use to the system.

**EFFECTIVE DATE:** This notice will be adopted without further publication in the **Federal Register** on November 10, 1997, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before October 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** John W. Hall, Director, National Finance Center, OCFO, USDA, New Orleans, Louisiana 70160.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is redesignating this system as USDAS/OCFO–3, ''Administrative Billings and Collections, USDA/OCFO'' and adding a new routine use implementing the Treasury Offset provisions of the Debt Collection Improvements Act of 1996 (''DCIA''), Public Law No. 104–134. The DCIA requires Federal agencies to forward debts over 180 days delinquent to the Secretary of the Treasury or to other Federal agencies designated by the Secretary of the Treasury for the purpose of offsetting Federal payments to collect delinquent debts owed to the Federal Government. This system of records is maintained by the National Finance Center (NFC). The purpose of this notice is to announce the creation and character of this new routine use of records maintained by the NFC. The system contains data on debtor's name, address, Social Security Number or assigned vendor number, amount of indebtedness, amount of current collection, and amount of total billing, Eventually, these records are transferred to a history file for inquiry use.

A ''Report on New System,'' required by 5 U.S.C. 552a(o), as implemented by Transmittal Memoranda 1 and 3 to OMB Circular A–108, was sent to the Chairman, Committee on Governmental Affairs, United States Senate, the Chairman, Committee on Government Reform and Oversight, House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on August 29, 1997.

Signed at Washington, DC, on August 29, 1997.

**Dan Glickman,**

*Secretary of Agriculture.*

### USDA/OCFO–3

**SYSTEM NAME:**

Billings and Collections Systems, USDA/OCFO.

**SYSTEM LOCATION:**

National Finance Center, OCFO, USDA, New Orleans, Louisiana 70160.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who are indebted to the Federal Government and whose debts are serviced by the National Finance Center.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This automated system established a master file containing the debtor's name, address, Social Security Number or assigned vendor number, amount of indebtedness, amount of current collection, and amount of total billing. Eventually, these records are transferred to a history file for inquiry use. Information regarding debts subject to IRS offset, claims on travel advances, and delinquent debtor names and Social Security Numbers used in computer matches with the Department of Defense and the United States Postal Service are kept separate from the administrative billings and collections data base in a manually updated claims data base.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

31 U.S.C. 3711 through 3719.

The records in this system are used to issue bills and collect funds due to the Government in compliance with the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749, as amended by Public Law 98–167, 97 Stat. 1104, and the Debt Collection Improvements Act of 1996, Public Law 104–134, 110 Stat. 1321.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

(1) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation or order issued pursuant thereto.

(2) Referral to the Department of Justice when (a) the agency, or any component, thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(3) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d)

the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to the litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, providing, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information that is compatible with the purpose for which the records were collected.

(4) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made on behalf of the individual.

(5) Information will be forwarded to another Federal agency when a Federal employee accepts employment with another Federal agency.

(6) Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their payments of debts owed to the U.S. Government in order to collect debts by voluntary repayment, administrative, or salary offset procedures under the provisions of 5 U.S.C. 5514 or through collection agencies under the provisions of 31 U.S.C. 3718.

(7) Information contained in this system of records may be disclosed to a debt collection agency when USDA determines such referral is appropriate for collecting the debtor's account as provided for in U.S. Government contracts with collection agencies executed pursuant to 31 U.S.C. 3718.

(8) Where prior collection efforts have failed, the USDA will refer to the Department of the Treasury information from this system of records concerning past-due legally enforceable debts for offset against tax refunds that may become due the debtors for the tax year in which referral is made in accordance with IRS regulation at 26 CFR 301.6402–6T, offset of Past-due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

(9) Information contained in this system of records may be disclosed to a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

(10) Information contained in this system of records, related to non-tax debts or claims that are delinquent for 180 days, will be sent to the Secretary of the Treasury or to other Federal agencies designated by the Secretary of the Treasury for the purpose of offsetting Federal payments to collect delinquent debts, owed to the Federal Government. Records will be matched by Taxpayer Identification Number (TIN) and name. For an individual, the TIN is the Social Security Number. For a business, the TIN is the Employer Identification Number. The release of this information is in accordance with 31 U.S.C. 3716 and 4 CFR part 102.

**POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on magnetic tape files, disk files, and in folders at the National Finance Center.

**RETRIEVABILITY:**

Records in the administrative billings and collections data base are retrieved by Social Security Number and by name of individual or equivalent identifying number. Records in the claims data base are retrieved by the claim number, by Social Security Number and name of individual, or by equivalent identifying number.

**SAFEGUARDS:**

Magnetic tape files and disk files are kept in a locked computer room and tape library which can be accessed by authorized personnel only. File folders are maintained in secured areas with access by authorized personnel only. Disk files are password protected to limit access to authorized personnel only. Online access by National Finance Center and other agency personnel is password protected.

**RETENTION AND DISPOSAL:**

Master history magnetic tapes are retained in accordance with a tape library management schedule. Manual records are transferred to the Federal Records Center for storage and disposition in accordance with General Services Administration regulations.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, National Finance Center, OCFO, USDA, PO Box 60000, New Orleans, Louisiana 70160.

**NOTIFICATION PROCEDURE:**

Any individual may request information regarding this system of records or information as to whether the system contains records pertaining to him/her from the System Manager. A request for information pertaining to an individual should be in writing and should contain: name, address, Social Security Number, and particulars involved (i.e., dates of claims, copies of correspondence, etc.).

**RECORD ACCESS PROCEDURES:**

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the System Manager.

**CONTESTING RECORD PROCEDURES:**

Any individual may obtain information as to the procedures for contesting a record in the system which pertain to him/her by submitting a written request to the System Manager.

**RECORD SOURCE CATEGORIES:**

Information in this system comes primarily from USDA employees, former USDA employees, non-USDA employees, agency claimants, and USDA or other investigative personnel.

[FR Doc. 97–23903 Filed 9–9–97; 8:45 am]

BILLING CODE 3410–18–M

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Notice of Extension for Availability of Funding and Requests for Proposals for the Section 538 Rural Rental Housing Guaranteed Loan Demonstration Program

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Housing Service (RHS) announces the extension of the application deadline to September 22, 1997. Applications for the program will be processed as they are received, until the funds are exhausted.

RHS previously announced the availability of the section 538 Rural Rental Housing Guaranteed Loan program on a demonstration basis on July 2, 1997, 62 FR 35782. The application closing date is extended from August 18, 1997, to September 22, 1997.

**DATES:** The deadline for receipt of applications is 4:00 p.m., Eastern Daylight Savings Time on September 22, 1997. Applications received after such date and time will be returned. Lenders are encouraged to submit applications prior to September 22, 1997, as applications will be reviewed as they are received. If there are differences between any previously distributed guidelines and this notice, the requirements of this notice shall prevail. If RHS is unable to obligate section 538 funds for guaranteed loans by

September 26, 1997, any remaining section 538 funds will be transferred for use under the section 515 program. Qualified lenders may call the office of the Multi-Family Housing Processing Division of the Rural Housing Service, at 202–720–1604 for a copy of the application package. This is not a toll-free number. Hearing- or speech-impaired persons may access that number by calling toll-free the Federal Information Relay Service at (800) 877–8339.

Dated: August 28, 1997.

**Jan E. Shadburn,**

*Administrator, Rural Housing Service.*

[FR Doc. 97–23905 Filed 9–9–97; 8:45 am]

BILLING CODE 3410–XV–U

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by November 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1522, Washington, DC 20250–1522. Telephone (202) 720–0736.

**SUPPLEMENTARY INFORMATION:**

*Title:* RUS Form 793, Request for Release of Lien and/or Approval of Sale.

*OMB Control Number:* 0572–0041.

*Type of request:* Reinstatement of an information collection.

*Abstract:* The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric and telecommunications systems to provide and improve electric and telecommunications service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C., 901 *et seq.*,) (RE Act). All current and future capital assets of RUS borrowers are ordinarily mortgaged or pledged to the Federal Government as security for RUS loans. Assets include tangible and intangible utility plant, non-utility property, construction in progress, and materials, supplies, and equipment normally used in a telecommunications system. The RE Act and the various security instruments, e.g., the RUS mortgage, limit the rights of an RUS borrower to dispose of its capital assets.

The RUS Form 793, Request for Release of Lien and/or Approval of Sale, allows the telecommunications program borrower to seek agency permission to sell some of their assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's systems. RUS telecommunications borrowers fill out the form to request RUS approval in order to sell capital assets.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2.84 hours per response.

*Respondents:* Small business or organizations.

*Estimated Number of Respondents:* 75.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 213.

Copies of this information collection, and related form and instructions, can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, at (202) 720–0812.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of 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. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Avenue., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 4, 1997.

**Adam Golodner,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 97–23947 Filed 9–9–97; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Census 2000 Dress Rehearsal Integrated Coverage Measurement (ICM) Person Interview and Outmover Tracing Activities

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before November 10, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Magdalena Ramos, Staff Group Leader for ICM Operations, Bureau of the Census, Room 3770, Washington, DC 20233, (301)457–4295.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Bureau of the Census developed the Integrated Coverage Measurement (ICM) approach for measuring coverage of housing units and populations during the decennial census. In the Census 2000 Dress Rehearsal, we are interested in conducting a rehearsal of our ICM approach to measuring the coverage of the census for housing units and people. The Census 2000 Dress Rehearsal will be conducted in an urban site (Sacramento, California), a nonurban site (Columbia, South Carolina, and surrounding area), and one American Indian Reservation (Menominee Reservation, Wisconsin).

The first phase of the ICM consists of the Independent Listing and the Housing Unit Follow-up operations. During the Independent Listing, the Bureau of the Census will obtain a complete housing inventory of all addresses within the Census 2000 Dress Rehearsal sites just before the dress rehearsal commences. The ICM listing will be matched to the census list of

addresses; the unmatched cases will be sent to the field for reconciliation during the Housing Unit Follow-up operation. The resultant address listing will be used in the ICM Person Interview phase. The materials for the independent listing have been submitted to the Office of Management and Budget (OMB) and the Bureau of the Census has received approval for the materials. The materials for the Housing Unit Follow-up operation will be submitted shortly to the OMB.

During the second phase of the ICM, the ICM Person Interview, the Bureau of the Census will target ICM sample cases for telephone interviews; these cases will consist of households in ICM areas that returned their census questionnaires and provided their telephone numbers. After the conclusion of the Nonresponse Follow-up operation for a cluster, all remaining ICM sample cases will be interviewed using a person-to-person approach. Telephone interviews may also be used later in the process for hard to enumerate areas or situations.

Intensive probing techniques will be used to reconstruct a roster of the residents of the housing unit. The interviewing instrument will examine all the people mentioned during the interview and determine if they should be enumerated at the housing unit in question according to census residency rules. The interviewer will ask probing questions to determine the status of the units and their occupants on census day, April 4, 1998. For households where the census day residents have moved out, we will attempt to obtain an ICM proxy interview from the current residents or another reliable proxy. We will use the proxy information in the estimates. When combined with our efforts to match responses to the results of the initial count, the interview data will identify persons missed or incorrectly included in the census as well as persons correctly enumerated.

An Outmover Tracing Evaluation will be conducted during the time when the ICM Person Interviews are being completed. For census day residents that have moved (outmovers), we will attempt to obtain their current address and/or telephone number. We will interview the ''outmovers'' at their new address by telephone or in person. For the telephone interviews, we will use a computer assisted telephone interviewing (CATI) instrument and for the personal visit interviews, a paper questionnaire, Form DT–1340.

For outmover households where we successfully trace and interview a member of the Census day household, the information obtained in this interview will be used in the evaluation. For households where we are unable to locate the Census day residents or obtain an interview from them, we will use the information from the proxy interview in the evaluation.

For quality assurance, at maximum, a 20 percent random sample of respondents in the ICM sample will be reinterviewed using the CAPI instrument.

After the person interview, person matching for Dual System Estimation (DSE) will be conducted. Unresolved cases will be reconciled in the field during the ICM Person Follow-up interview. The materials to be used in the Person Follow-up interview will be submitted later this year.

## II. Method of Collection

Telephone and person-to-person interviews.

## III. Data

OMB Number: Not available.

*Form Number:* CAPI Person Interview (no form number), CAPI Person Quality Assurance Interview (no form number), CATI Outmover Tracing Interview (no form number), and Form DT–1340, ICM Outmover Tracing Questionnaire.

*Type of Review:* Regular.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 31,000 housing units.

*Estimated Time Per Response:* 20 minutes (CAPI Person Interview and CATI/Paper Outmover Tracing Interview) and 10 minutes (CAPI Person QA Interview).

*Estimated Total Annual Burden Hours:* Total = 12,199 Hours.

Person Interview = 10,333 Hours (31,000×20 minutes).

Person QA Interview = 1,033 Hours (6,200×10 minutes).

Outmover Tracing Evaluation = 833 Hours (2,500×20 minutes).

*Estimated Total Annual Cost:* There is no cost to respondents except for their time to respond.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13, U.S. Code, Sections 141, 193, and 221.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 4, 1997.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–23981 Filed 9–9–97; 8:45 a.m.]

BILLING CODE 3510–07–P

---

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 70–97]**

## Foreign-Trade Zone 27—Boston, MA; Application for Subzone Status; Massachusetts Heavy Industries, Inc. (Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Massachusetts Port Authority, grantee of FTZ 27, requesting special-purpose subzone status for the shipbuilding facility of Massachusetts Heavy Industries, Inc. (MHI), in Quincy, Massachusetts (formerly, General Dynamics-Quincy shipyard, the site of former FTZ Subzone 27B). 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 September 4, 1997.

The MHI shipyard (104 acres, up to 1,000 employees) is located at 115 East Howard Street in the City of Quincy, on the Weymouth Fore River. Currently undergoing extensive renovation, the facility will be used for the construction, repair, and conversion of commercial vessels for domestic and international customers. Foreign components expected to be used at the MHI shipyard (up to 30% of total) include propulsion units, main engines and control systems, profile steel, casting plates, bow thrusters, pumps, tank level and alarm systems, diesel generators, navigation equipment, radio communications, deck machinery, rudder systems, heating/ventilation systems, valves, gauges, boilers, pumps, condensers, propellers and shafts, anchor systems, incinerators, inert gas plants, lifeboats/davits, hydraulic power

racks, emergency generators, panels and consoles (1997 duty rate range: free—5.2%, *ad valorem*).

FTZ procedures would exempt MHI from Customs duty payments on the foreign components (except steel mill products) used in export activity (up to 100% of total production). 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 (e.g., pipe, plate), which requires that Customs duties be paid on such 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 November 10, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 24, 1997).

A copy of the application will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, World Trade Center, Suite 307, 164 Northern Avenue, Boston, MA 02210

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: September 4, 1997.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 97–23997 Filed 9–9–97; 8:45 am]

BILLING CODE 3510–25–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–802]**

### Preliminary Results of Antidumping Duty Administrative Review Gray Portland Cement and Clinker From Mexico

**AGENCY:** International Trade Administration/Import Administration/Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 1995, through July 31, 1996, and one firm, CEMEX, S.A., and its affiliated party Cementos de Chihuahua, S.A. de C.V. The results of this review indicate the existence of dumping margins for the period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** September 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Steven Presing, Kristen Smith or Kristen Stevens, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3793.

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 353 (April 1997).

#### Background

On August 12, 1996, the Department of Commerce (the Department) published in the **Federal Register** a Notice of Opportunity to Request Administrative Review of the antidumping duty order on gray portland cement and clinker from Mexico for the above-referenced period (61 FR 156, August 12, 1996). In accordance with 19 CFR 353.22, CEMEX, S.A. (CEMEX) and the Petitioner, the Southern Tier Cement Committee, requested a review of CEMEX. On October 17, 1996, the Department published a Notice of Initiation of Antidumping Review (61 FR 181, September 17, 1996). The Department is now conducting a review of this Respondent pursuant to section 751 of the Act.

#### Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as ''other hydraulic cements.'' The HTS subheadings are provided for convenience and U.S. Customs Service (the Customs Service) purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

#### Verification

As provided in section 782(i) of the Act, we verified information provided by the Respondent using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in verification reports in the official file for this case (public versions of these reports are on file in room B–099 of the Department's main building).

#### Collapsing

On May 19, 1997, the Department published new regulations (62 FR 27296, May 19, 1997). Although this proceeding is not governed by those regulations, they are instructive where they describe current Department practice and policy. Section 351.401(f) of the new regulations, 62 FR at 27410, describes the Department's current policy regarding when it will treat two or more producers as a single entity (i.e., ''collapse'' the firms) for purposes of calculating a dumping margin. See also

Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review (62 FR 17148, 17154, April 9, 1997). The regulations provide that the Department will treat two or more producers as a single entity where (1) the producers are affiliated; (2) the producers have production facilities that are sufficiently similar so that a shift in production would not require substantial retooling; and (3) there is a significant potential for the manipulation of price. For this last criterion, the Department may consider (a) the level of common ownership; (b) whether managerial employees or board members of one of the affiliated producers sit on the board of the other affiliated producer; and (c) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers. In the current review, CEMEX had equity ownership of over 5 percent in Cementos de Chihuahua, S.A. de C.V. (CDC); therefore, we have preliminarily found that the two parties are affiliated. In addition, CDC and CEMEX have similar production processes and facilities. Therefore, a shift in production would not require substantial retooling. Finally, in regards to the last criterion, the Department reviewed levels of common ownership, shared board members, and intertwined business relations, and found a significant potential for the manipulation of price. As a result, the Department has preliminarily concluded that these affiliated producers should be treated as a single entity and that a single, weighted-average margin should be calculated for these companies. (A complete analysis of this issue is contained in a memorandum from Roland L. MacDonald to Joseph A. Spetrini, dated September 2, 1997, located in the official file of this case.)

**Duty Absorption**

On September 30, 1996, Petitioner requested that the Department determine whether Respondent had absorbed antidumping duties during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter. The Department's interim regulations do not address this provision of the Act.

For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, section 351.213(j)(2) of the Department's new antidumping regulations provides that the Department will make a duty-absorption determination, if requested, for any administrative review initiated in 1996 or 1998. See 62 FR 27394 (May 19, 1997). Because the antidumping duty order on Mexican cement has been in effect since 1990, this order is a transition order in accordance with section 751(c)(6)(C) of the Act. (See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al,: Preliminary Results of Antidumping Administrative Review (62 FR 31568, June 10, 1997). The preamble to the new antidumping regulations explains that reviews initiated in 1996 will be considered initiated in the second year, and reviews initiated in 1998 will be considered initiated in the fourth year (62 FR 27317, May 19, 1997). This approach ensures that interested parties will have the opportunity to request a duty-absorption determination prior to the time for a sunset review of the order under section 751(c) of the Act on entries for which the second and fourth years following an order have already passed. Since this review was initiated in 1996, and a request was made for a determination, we are making a duty-absorption determination as part of this administrative review.

The statute provides for a determination on duty absorption if the subject merchandise is sold in the United States through an affiliated importer. In this case, Respondent sold through importers that are affiliated within the meaning of section 751(a)(4) of the Act. Furthermore, we have preliminarily determined that CEMEX has margins on 92.59 percent of its U.S. sales.

We presume that duties will be absorbed for sales which were dumped. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et.al,: Preliminary Results of Antidumping Administrative Review (62 FR 31568, June 10, 1997). Our duty-absorption presumption can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty. However, there is no such evidence on the record. Under these circumstances, we preliminarily find that antidumping duties have been absorbed by CEMEX on the percentage of U.S. sales indicated.

**Transactions Reviewed**

In accordance with section 751 of the Act, the Department is required to determine the normal value (NV) and export price (EP) or constructed export price (CEP) of each entry of subject merchandise. Because there can be a significant lag between entry date and sale date for CEP sales, it has been the Department's practice to examine U.S. CEP sales during the period of review. See Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review (58 FR 48826, 1993) (Department did not consider ESP (now CEP) entries which were sold after the POR). The Court of International Trade has upheld the Department's practice in this regard. See *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States*, Slip Op. 95–195 (CIT 1995.)

**Fair Value Comparisons**

To determine whether sales of gray portland cement by Respondent to the United States were made at less than fair value, we compared the EP or CEP to the NV as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions, during the same month and at the same level of trade.

**Export Price and Constructed Export Price**

We used EP, in accordance with subsections 772 (a) and (c) of the Act, where the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation and CEP was not otherwise warranted based on the facts of the record. In addition, we used CEP in accordance with subsections 772 (b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

We calculated EP based on delivered prices to unaffiliated customers in the United States. Where appropriate, we made adjustments from the starting price for early payment discounts, foreign inland freight, foreign brokerage and handling, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. customs duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for

early payment discounts and corrections for billing errors. We deducted direct and indirect selling expenses, including imputed credit expenses and inventory carrying costs, that related to commercial activity in the United States in accordance with section 772(d) of the Act. We also made deductions for foreign brokerage and handling, foreign inland freight, international freight, U.S. inland freight, U.S. brokerage and handling, and U.S. duty in accordance with section 772(c)(2) of the Act. Finally, we made an adjustment for CEP profit in accordance with section 772 (d)(3) of the Act.

*Further Manufacturing*

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*e.g.*, cement that was imported and further processed into finished concrete by U.S. affiliates of foreign exporters), we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act was applicable.

Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for subject merchandise by the affiliated person. Based on this analysis, we estimated that the value added was at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we preliminarily determine the value added is likely to exceed substantially the value of the subject merchandise. In addition, sales of identical and other subject merchandise were made in sufficient quantities to serve as a basis for comparison. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average CEP calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

No other adjustments to EP or CEP were claimed or allowed.

**Normal Value**

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since Respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales.

In particular, we based NV on home market sales of Type I cement by CEMEX and CDC. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. However, in situations where identical product types cannot be matched, the statute expresses a preference for basing NV on sales of similar merchandise. *See* section 773(a)(1)(B) and 771(16) of the Act. The history of this order demonstrates (and no party disputes) that, of the various types of cement subject to the order on Mexican cement, Type I cement is most similar to Type II and Type V cement, and pozzolanic cement is the least similar.

During the POR, CDC only sold one type of cement in Mexico subject to the antidumping order-Type I cement. CEMEX, on the other hand, sold four basic types of cement in Mexico during the POR—Type I, Type II, Type V and pozzolanic. However, at verification the Department discovered that all of the merchandise produced at the Yaqui and Campana plants was either Type V or pozzolanic. In other words, cement sold as Type I and Type II from these plants was actually Type V. Since we received this information at such a late date, the Department was not able to determine whether these sales of Type I cement provide an appropriate basis for calculating NV. For example, the Department does not know whether these sales were made above cost or within the ordinary course of trade. In short, our sales and cost data base for these sales of Type I cement (produced at either Yaqui or Campana) is extremely flawed. Therefore, as facts available, the Department finds these sales to be an inappropriate basis for NV and is excluding them from its calculations.

As for CEMEX's home market sales of Type II and Type V cement during the POR, the Department has preliminarily determined that they are outside the ordinary course of trade. As more fully described in the ''Ordinary Course of Trade'' section of this notice, these sales are not representative of CEMEX's home market sales.

Where appropriate, we adjusted home market sales of Type I cement for discounts, credit expenses, inland freight, and inland insurance. We also adjusted the starting price for billing adjustments to the invoice price. In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs.

We made adjustments, where appropriate, for physical differences in merchandise (DIFMER) in accordance with section 773 (a)(6)(C)(ii) of the Act. For CDC's sales, we calculated a DIFMER adjustment using plant specific cost data reported by CDC. For sales made by CEMEX, we preliminarily determine, in accordance with section 776 of the Act, that the use of partial facts available for a DIFMER adjustment is appropriate, and that such partial facts available should be based on an adverse inference. Accordingly, we have applied a twenty percent upward adjustment (the maximum usually permitted by the Department) as adverse facts available.

Section 776(a) of the Act requires that the Department use facts otherwise available when necessary information is not on the record, or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. Section 776(b) of the Act authorizes the Department to use an adverse inference in determining the facts otherwise available whenever an interested party has failed to cooperate with the Department by not acting to the best of its ability to comply with requests for information. Section 776(b) authorizes the Department to base adverse facts available on information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record.

At verification, the Department found that the DIFMER reported by CEMEX was based not on physical differences, but an allocation of costs between Type I and Type II cement sales for what was in fact the same physical product—Type

V cement (see below). This information could not be used for purposes of the DIFMER calculation, and other information on the record is not appropriate for this purpose. Thus, pursuant to section 776(b) and 782(e) of the Act, the Department had to rely on facts available for the DIFMER adjustment. In addition, we determined that CEMEX significantly impeded the review by not informing the Department until verification that there were no physical differences in any cement (other than pozzolanic) produced at Yaqui. As explained below, this failure prevented the Department from collecting and analyzing other information that could have been used to calculate the DIFMER adjustment.

The Department first requested DIFMER information from CEMEX on September 23, 1996. CEMEX was asked to base its DIFMER calculations on differences in physical characteristics between Type I cement sold in Mexico and the type of cement being exported to the United States. CEMEX did not supply DIFMER information in response to this request. On December 24, 1996, in a supplemental questionnaire, the Department requested for the second time that CEMEX submit DIFMER information. On February 14, 1997, CEMEX reported variable cost information for Type I cement at 11 plants, including the Yaqui facility, and information for Type II cement for the Campana and Yaqui facilities. On March 10, 1997 the Department sent another supplemental questionnaire requesting that CEMEX quantify the DIFMER. In response, CEMEX stated that ''differences in VCOM (variable cost of manufacturing) reflect differences in physical characteristics for Type I and Type II cement.'' In other words, CEMEX asserted that the Campana and Yaqui facilities produced different types of cement (Type I and Type II at Yaqui and Type II and Type V at Campana), each having different physical characteristics. At verification, the Department found that the VCOM reported by CEMEX for the Yaqui and Campana facilities was based on sales allocations, not physical differences. In fact, only one type of cement (other than pozzolanic) is produced at these plants—Type V. Although CEMEX produces only Type V at Yaqui, it sells this Type V cement sometimes as Type I and sometimes as Type II. In other words, CEMEX sold Type V cement to customers only requiring Type I or Type II cement. These facts rendered the reported DIFMER data unusable.

Furthermore, it is not appropriate to use other information on the record as a basis for a DIFMER adjustment. We determined in the last administrative review that it is not appropriate to use the weighted-average VCOM of all plants producing Type I and the VCOM of the U.S. merchandise due to efficiency differences between plants. Thus, we relied in that review on the purported VCOM differences for merchandise produced at Yaqui. Because we did not learn until verification in the instant review that in fact only one type of cement was produced at Yaqui and thus there were no cost differences, we were precluded from properly considering other appropriate alternatives for a DIFMER adjustment. For example, we did not have an opportunity to solicit comments and obtain information about differences in production processes, plant efficiencies, and material inputs that may have provided an appropriate basis for a DIFMER adjustment.

Therefore, we have applied to CDC's home market sales a calculated DIFMER based upon plant-specific reported data, and as adverse facts available, applied a twenty percent upward adjustment for CEMEX's sales in the home market. See *CEMEX S.A.* v. *United States,* Slip Op. 96–132 at 9 (CIT 1996), *appeal pending,* Appeal No. 97–1151 (Fed. Cir.) (upholding the use of 20% adverse DIFMER under similar circumstances).

*A. Arm's-Length Sales*

Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length.

*B. Cost of Production Analysis*

Petitioner alleged, on December 12, 1996, that CEMEX and its affiliate, CDC, sold gray portland cement and clinker in the home market at prices below their cost of production (COP.) Based on these allegations, the Department determined, on January 3, 1997, that it had reasonable grounds to believe or suspect that CEMEX had sold the subject merchandise in the home market at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation in order to determine whether CEMEX and CDC made home market sales during the POR at prices below their COP.

In accordance with section 773(b)(3) of the Act, we calculated an average monthly COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition ready for shipment. In our COP analysis, we used the home market sales and COP information provided by the Respondent in its questionnaire responses.

After calculating an average monthly COP, we tested whether home market sales of cement were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit recovery of all costs within a reasonable period of time. We compared model-specific average monthly COPs to the reported home market prices less any applicable movement charges, discounts and rebates. In determining whether to disregard home market sales made at prices below the average COP, we examined (1) whether, within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Pursuant to section 773(b)(2)(C) of the Act, because less than 20 percent of the Respondent's sales of the foreign like product under consideration for the determination of NV were at prices less than COP, we did not disregard any below-cost sales of the product.

*C. Inflation*

Mexico experienced significant inflation during the POR, as measured by the consumer price index published in International Financial Statistics and the consumer price index from the Bank of Mexico. This data indicated that the annual inflation rate in Mexico during the POR exceeded 40 percent. In accordance with our practice, to avoid the distortions caused by the effects of this level of inflation in prices, we limited our comparisons to sales in the same month. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey ( 62 FR 9738, March 4, 1997). When the rate of home market inflation is significant, as it is in this case, it is important that we use as a basis for NV home market prices that are as contemporaneous as possible with the date of the U.S. sale. This is to minimize the extent to which calculated dumping margins are overstated or understated solely due to

price inflation that occurred in the intervening time period between the U.S. and home market sales. We have also used monthly cost of production data for this reason.

*D. Currency Conversion*

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York pursuant to section 773(a) of the Act.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, ignoring any ''fluctuations.'' We determine that a fluctuation exists when the daily exchange rate differs from a bench mark rate by 2.25 percent or more. The benchmark rate is defined as the rolling average of the rates for the past 40 business days as reported by the Federal Reserve Bank of New York. When we determine that a fluctuation existed, we substitute the benchmark rate for the daily rate. For a complete discussion of the Department's exchange rate methodology, see ''Change in Policy Regarding Currency Conversions'' (61 FR 9434, March 8, 1996).

*E. Ordinary Course of Trade*

Section 773(a)(1)(B) of the Act requires the Department to base NV on ''the price at which the foreign like product is first sold (or in the absence of sales, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.'' Ordinary course of trade is defined as ''the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.''

The purpose of the ordinary course of trade provision ''is to prevent dumping margins from being based on sales which are not representative'' of the home market. *Monsanto Co.* v. *United States,* 698 F. Supp. 275, 278 (CIT 1988). By basing the determination of NV upon representative sales, the provision helps to ensure that the comparison between NV and U.S. sales is done on an ''apples to apples'' basis.

Apart from identifying certain sales that are below cost (Section 773(b)(1)) or between affiliated persons (section 773(f)(2)), Congress has not specified any criteria that the Department should use in determining the appropriate ''conditions and practices'' which are ''normal in the trade under consideration.'' Therefore, ''Commerce, in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made within the ordinary course of trade.'' *Thai Pineapple Public Co.* v. *United States,* 946 F. Supp. 11, 14–17 (CIT 1996).

The Department's ordinary course-of trade inquiry is far-reaching. It evaluates not just '' 'one factor taken in isolation but rather . . . all the circumstances particular to the sales in question.' '' *Murata Mfg. Co.* v. *United States,* 820 F. Supp. 603, 607 (CIT 1993). In short, we examine the totality of the facts in each case to determine if sales are being made for ''unusual reasons'' or under ''unusual circumstances.'' Electrolytic Manganese Dioxide from Japan; Final Results of Antidumping Duty Administrative Review (58 FR 28551, 28552, 1993).

In the second administrative review of this order, the Department determined that CEMEX's sales of Type II and Type V cement were outside the ordinary course of trade and, therefore, could not be used in the calculation of NV (then referred to as ''foreign market value''). See Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review (58 FR 47253, 27254, Sept. 8, 1993). In making this determination, the Department considered, *inter alia,* shipping distances and costs, sales volume, profit levels, sales history, home market demand and the promotional aspect of sales. *See* Decision Memorandum to Joseph A. Spetrini, August 31, 1994; *see also* Memorandum from Holly A. Kuga to Joseph A Spetrini, August 31, 1993 (public versions of these memoranda are on file in Room B–099 of the Department's main building). Based upon similar facts and using a similar analysis, the Department reached the same conclusion in the final results of the fifth administrative review for certain sales of Type II cement by CEMEX in Mexico. Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review (62 FR 17148, 17151, April 9 1997).

In the instant review, Petitioner alleged, as it did in the second review, that CEMEX's sales of Type II cement in Mexico were outside the ordinary course of trade. Based on this allegation and the relevant findings in the prior review, the Department determined that it had reasonable grounds to believe or suspect that CEMEX's home market sales of Type II cement were outside the ordinary course of trade. Therefore, pursuant to section 773(a)(1)(B) of the Act, the Department has examined the totality of the circumstances surrounding CEMEX's sales of cement in Mexico that are marketed as Type II cement (which are identical in physical characteristics to the cement that CEMEX sells in the United States).

A full discussion of our preliminary conclusions, requiring reference to proprietary information, is contained in a Departmental memorandum in the official file for this case (a public version of this memorandum is on file in room B–099 of the Department's main building). Generally, however, we have found: (i) The volume of Type II home market sales is extremely small compared to sales of other cement types, (ii) the number and type of customers purchasing Type II cement is substantially different from other cement types, (iii) shipping distances and freight costs for Type II home market sales is significantly greater than for sales of other cement types, and (iv) CEMEX's profit on Type II sales is small in comparison to its profits on all cement types.

There are two other factors, historical sales trends and the ''promotional quality'' of Type II cement sales, which were considered in the second review ordinary-course-of-trade analysis. On March 10, 1997, the Department issued a questionnaire requesting CEMEX to support its position that home market sales of Type II cement were in the ordinary course of trade by addressing, among other things, ''historical sales trends'' and ''marketing reasons for sales other than profit.'' CEMEX's response (copies of its submission from the fifth administrative review), failed to address these two items. Thus, as facts available, the Department finds that the facts regarding these items have not changed since the second review and that: (i) CEMEX did not sell Type II cement until it began production for export in the mid-eighties, despite the fact that a small domestic demand for such existed prior to that time; and, (ii) sales of Type II cement continue to exhibit a promotional quality that is not evidenced in CEMEX's ordinary sales of cement (see memorandum from Holy A. Kuga to Joseph A. Spetrini, dated August 31, 1993). (A public version of this memorandum is on file in room B–099 of the Department's main building.)

For the reasons stated above, the Department has preliminarily determined that CEMEX's home market sales of Type II cement during the review period were outside the ordinary course of trade. We note that the facts established in the record of this review

are very similar to the facts which led the Department to determine in the second and fifth reviews that home market sales of Type II cement were outside the ordinary course of trade. The determination involving the second review, as noted above, was affirmed by the CIT in the *CEMEX* case. Slip Op. 95–72 at 14.

We have also preliminarily determined that home market sales of Type V cement by CEMEX during the POR are also outside the ordinary course of trade. As more fully described in the above-mentioned agency memorandum, these sales share many attributes with CEMEX's sales of Type II cement. First, the volume of these sales, either individually or in combination with sales of Type II cement, is extremely small compared to sales of Type I cement. Second, shipping distances and freight costs for sales of Type V cement are significantly greater than for sales of Type I. Third, the number and type of customers purchasing Type V cement is substantially different from those purchasing Type I.

As part of this analysis, we have also determined, based upon the facts otherwise available, that: (i) CEMEX did not sell Type V cement in Mexico until it began production for export in the mid-eighties, despite the fact that a small domestic demand for such existed prior to that time; and, (ii) sales of Type V cement continue to exhibit (as they did in the second review) a promotional quality that is not evidenced in CEMEX's ordinary sales of cement. We believe that this use of facts available is warranted and appropriate. First, the Department did not learn until verification that these sales of Type V involved cement physically identical to the cement that CEMEX sold in Mexico (and the United States) as Type II. Had Respondent disclosed this fact earlier in the review, we could have expanded our ordinary-course-of-trade inquiry for Type II sales, including the scope of verification and our questionnaires, to include home market sales of the physically identical Type V cement. Second, as noted above, the Type V and Type II sales involve physically identical merchandise marketed under similar conditions and circumstances (*e.g.*, low sales volume shipped unusually long distances). Therefore, it is reasonable, as facts available, to extend the results of our inquiry concerning the history of Type II sales and their promotional nature to the Type V sales as well. We also note that those results are consistent with our findings in the second review concerning sales of Type V cement.

In conclusion, the decision to exclude sales of Type II and Type V cement from the calculation of NV centers around the unusual nature and characteristics of these sales compared to the vast majority of CEMEX's other home market sales. Based upon these differences, the Department has preliminarily determined that they are not representative of CEMEX's home market sales. Stated differently, these sales were not within CEMEX's ordinary course of trade.

*F. Fictitious Market*

Petitioner has also claimed that CEMEX established a fictitious market in Mexico for its sales of ''Type II'' cement. Since the sales in question have preliminarily been found to be outside the ordinary course of trade and, accordingly, will not be used in the calculation of NV, it is not necessary for us to address this issue for these preliminary results.

*G. Level of Trade*

To the extent practicable, we determine NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there are no sales at the same level of trade, we compare U.S. sales to home market (or, if appropriate, third-country) sales at a different level of trade. The NV level of trade is that of the starting price sales in the home market. When NV is based on constructed value (CV), the level of trade is that of the sales from which we derive selling, general, and administrative expenses (SG&A) and profit.

For both EP and CEP, the relevant transaction for the level of trade analysis is the sale (or constructed sale) from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer the expenses under section 772(d) of the Act and the profit associated with these expenses. These expenses represent activities undertaken by the affiliated importer. Because the expenses deducted under section 772(d) represent selling activities in the United States, the deduction of these expenses normally yields a different level of trade for CEP than for the later resale (which we use for the starting price). Movement charges, duties and taxes deducted under section 772(c) do not represent activities of the affiliated importer, and we do not remove them to obtain the CEP level of trade.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user, regardless of whether the final user is an individual consumer or an industrial user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and U.S. export markets, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, original equipment manufacturer (OEM) or wholesaler are commonly used by respondents to describe levels of trade, but, without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed levels of trade. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the levels of trade. Different levels of trade are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in levels of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. We use the average difference in net prices to adjust NV when NV is based on a level of trade different from that of the export sale. If there is a pattern of no price differences, the

difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary.

The statute also provides for an adjustment to NV when NV is based on a level of trade different from that of the CEP if the NV is more remote from the factory than the CEP and if we are unable to determine whether the difference in levels of trade between CEP level and NV level affects the comparability of their prices. This latter situation can occur where there is no home market level of trade equivalent to the U.S. sales level or where there is an equivalent home market level but the data are insufficient to support a conclusion on price effect. This adjustment, the ''CEP offset,'' is identified in section 773(a)(7)(B) of the Act and is the lower of the following:

- The indirect selling expenses on the home market sale, or
- The indirect selling expenses deducted from the starting price used to calculate CEP.

The CEP offset is not automatic each time we use CEP. The CEP offset is made only when the level of trade of the home market sale is more advanced than the level of trade of the U.S. (CEP) sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

To determine whether an level-of-trade adjustment was appropriate, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and the Mexican markets, including the selling functions, classes of customer, and selling expenses for CEMEX and CDC. Upon consideration of these factors, the Department determined that there is one level-of-trade in the home market—sales of cement shipped to end-users and ready-mixers in bulk and bagged form—and a different level-of-trade in the U.S. market—sales to affiliated importers. Because there was only one level of trade in the home market, we were unable to perform the analysis for a level of trade adjustment. We further determined that Respondent's sales to end users and ready-mixers in the home market are at a more advanced level of trade than sales to affiliated importers in the United States because CEMEX and CDC perform more selling functions for sales to end-users and ready-mixers in the home market than for sales to affiliated importers in the United States. As a result, the Department has preliminarily determined to grant Respondent an adjustment to normal value in the form of a CEP offset.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the dumping margin for CEMEX for the period August 1, 1995, through July 31, 1996, to be 35.88 percent.

Interested parties may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish its final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 180 days after the date of publication of this notice.

Upon completion of this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

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 the final results of review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned 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 manufacture of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 61.85 percent, the all others rate from the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double dumping duties.

This administrative review and notice are in accordance with the Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 353.22.

Dated: September 2, 1997.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 97–24000 Filed 9–9–97; 8:45 am]

BILLING CODE 3510–25–P

---

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–502]**

### Certain Welded Carbon Standard Steel Pipes and Tubes From India; Final Results of New Shippers Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of new shippers antidumping duty administrative review.

**SUMMARY:** On May 1, 1997, the Department of Commerce published the preliminary results of a new shippers administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The review covers two manufacturers/exporters. The period of review is May 1, 1995 through April 30, 1996.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations for Rajinder Pipes Ltd. and Lloyd's Metals & Engineers Ltd. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''*Final Results of Review*.''

**EFFECTIVE DATE:** September 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Davina Hashmi or Kristie Strecker, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; Telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

## The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA).

## Background

On May 1, 1997, the Department of Commerce (the Department) published the preliminary results of a new shippers administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India (62 FR 23760) (Preliminary Results). On May 30, 1997, we received briefs on behalf of Allied Tube & Conduit Corp., Sawhill Tubular Division of Armco, Inc., Wheatland Tube Co., and Laclede Steel Co. (petitioners), and Rajinder Pipes Ltd. (Rajinder). We received rebuttal briefs from petitioners, Rajinder Pipes Ltd., and Lloyd's Metals & Engineers (Lloyd's) on June 6, 1997. The Department has conducted this new shippers administrative review in accordance with section 751(a)(2)(B) of the Act.

This review covers Rajinder Pipes Ltd. (Rajinder) and Lloyd's Metals and Engineers (Lloyd's), and the period of review is May 1, 1995 through April 30, 1996.

## Scope of Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inch or more but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of the products covered by this review are currently classified under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

## Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain corrections that changed our results. We have corrected certain programming and clerical errors in our Preliminary Results, where applicable; they are discussed in the relevant comment sections below.

*Comment 1*

Petitioners contend that, based on the record developed in this new shippers review, Rajinder is not entitled to a duty-drawback adjustment to constructed export price (CEP). Petitioners state that there is little supporting documentation on the record with respect to the duty-drawback program to which Rajinder subscribes and that the information that is on the record is vague. Petitioners also argue that the record is void of evidence that Rajinder applied for or received duty drawback from the government for materials imported and used as inputs for the finished product exported to the United States. Petitioners state that the only evidence on the record supporting Rajinder's claimed duty drawback is a statement by Rajinder that it received a duty-drawback license.

In addition, petitioners contend that the Department applies a two-part test for determining whether an adjustment for duty drawback is appropriate, which petitioners contend Rajinder did not meet. First, petitioners maintain that the record does not indicate that import duties and rebates were directly linked to and dependent on one another. Second, petitioners also maintain that the record does not demonstrate that there were sufficient imports of raw materials (citing *Far East Machinery Co.* v *United States*, 699 F. Supp 309, 311 (CIT 1988); *Carlisle Tire & Rubber Co.* v *United States*, 657 F. Supp. 1287 (CIT 1987)).

Petitioners further contend that the Advanced License program at issue is an export-incentive program rather than a duty-drawback program. Petitioners argue that, under the Indian Advanced License program to which Rajinder subscribed, eligibility for the benefit was based on the act of exporting rather than the act of importing. Petitioners indicate that, in its supplemental questionnaire response, Rajinder termed the duty-drawback program as an ''export incentive'' program and that Rajinder stated that payment was carried in its financial books as an export-incentive program. Petitioners assert that the Advanced License program operates in a manner similar to export-restitution payments. Petitioners maintain that, as in *Sorbitol From France; Final Determination of Sales at Less Than Fair Value*, 47 FR 6459, 6460 (February 12, 1982), the Department found that export-restitution payments did not constitute a proper duty-drawback program and that the Court of International Trade (CIT) upheld the Department's decision denying drawback in the case where exporters of sorbitol were eligible for an export payment whether or not any import duties were paid.

Petitioners also contend that Rajinder's export-incentive program does not meet the requirement for an adjustment under the statute. Citing *Huffy* v. *United States*, 632 F. Supp. 50, 53 (CIT 1986), petitioners argue that the payment of duties on imported material must be a prerequisite to receipt of the export rebate in order to qualify for a duty-drawback adjustment.

Rajinder maintains that, in its questionnaire response, it stated that its claimed duty drawback is ''on the record''. Rajinder further states that, not only is there information on the record that a duty-drawback program exists in India, but the Department examined such information when it conducted a verification of Lloyds' claimed duty drawback. Rajinder also states that, despite the absence of ''documentary evidence'' on the record, it was ready and willing to provide evidence of its duty-drawback program at verification.

Rajinder deems petitioners' comment meaningless that eligibility for the benefit was based on the act of exporting a finished product, not on the act of importing a dutiable product. Rajinder maintains that, under the Advanced License program, the drawback benefit never accrues unless the product is exported. If a company imports raw materials duty-free and

then fails to meet its export obligation, the company would be required to pay the duty on the imported material. Rajinder also states that, under the Advanced License program, there is a direct link between the imported material and the exported finished product because duty-free materials that may be imported are specified in the license and the materials imported must conform to the materials used in the finished export product. Rajinder points out that the Department granted adjustments for duty drawback in Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From India, 60 FR 10545, 10547 (February 27, 1995), and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India, 59 FR 66915, 66919–20 (December 28, 1994), although in these cases adjustments were made to constructed value (CV).

Rajinder contends that the Advanced License program is different from cases which generally relate to export-restitution payments. Rajinder maintains that the Department affirmed that the Advanced License scheme is equivalent to a duty-drawback system in Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review, 61 FR 64687 (December 6, 1996).

Department's Position

Although we allowed it for the preliminary results, we have denied Rajinder's claimed duty drawback for these final results of review. In our supplemental questionnaire, we requested Rajinder to provide information demonstrating that it met our two-part test. In using this test, we consider: (a) whether the import duty and rebate are directly linked to, and dependent upon, one another; and (b) whether the company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product. This test has been upheld consistently by the Court of International Trade (CIT). See, *e.g., Federal-Mogul Corp.* v. *United States*, 862 F. Supp. 384, 409 (CIT 1994) (Federal-Mogul). Although we have recognized India's Advanced License program in other cases involving Indian companies exporting merchandise to the United States, Rajinder responded inadequately to our requests for further information regarding this claimed adjustment because its response did not contain the information we requested in our supplemental questionnaire. Rajinder only supplied a narrative description of the Advanced License program and a worksheet showing its duty-drawback calculations. Rajinder did not supply a copy of the Advanced License nor any evidence that a duty-drawback transaction occurred. Therefore, the record lacks any evidence supporting Rajinder's claimed duty drawback. Rajinder only stated that it applied for the license for duty drawback after the period of review (POR). Rajinder argued that we reviewed duty drawback at Lloyd's and, therefore, the adjustment should be granted to Rajinder. The program we reviewed at Lloyd's was the Passbook system, while Rajinder uses the Advanced License program and, therefore, this argument is not relevant.

Because we have denied Rajinder's claimed duty drawback on this basis, we have not addressed the other arguments concerning the program which petitioners raised.

*Comment 2*

Petitioners contend that Lloyd's is not entitled to a duty-drawback adjustment for its export price sales. Petitioners assert that Lloyd's failed to meet the Department's two-part test for a duty-drawback adjustment. Petitioners argue that the record fails to demonstrate that the payment of import duties was directly linked to and dependent upon receipt of the export rebate. Petitioners argue, in particular, that the payment of duties on imported material must be a prerequisite to receipt of the export rebate in order to qualify for a duty-drawback adjustment (citing *Huffy* v. *United States*). Petitioners maintain that, under India's Passbook system (a duty-drawback program), Lloyd's can apply for the export incentive even though it did not previously import raw material used in the production of the exported merchandise. According to petitioners, under the Passbook system, Lloyd's first exports products and then receives credit based on its volume of exports. Petitioners point out that, in its supplemental questionnaire response, Lloyd's states that the credit received may not be limited to the raw material used in the production of exported merchandise for which it received credit.

Petitioners assert that Lloyd's was free to import any type of hot-rolled steel product regardless of whether it was an input used in the production of the exported subject merchandise. Petitioners refer to the Input-Output (I-O) Norms, which identify on a product-specific basis the amount of raw material which may be imported compared to the amount of finished product which may be exported under the drawback program. Petitioners argue that Lloyds' response indicates that these norms allow for the importation of steel material that may not be used to produce the exported product.

Petitioners contend that the verification exhibit and Lloyds' supplemental questionnaire response demonstrate that, rather than operating as a duty-drawback system, the Passbook system is an export-incentive program. Petitioners state that the Passbook program is similar to that in Sorbitol From France, 47 FR 6459, 6460 (1982), in which the Department denied a duty-drawback adjustment because exporters of sorbitol were eligible for an export payment whether or not any import duties were paid, and the CIT upheld the Department's determination in *Roquette Freres* v. *United States*, 583 F. Supp. 599, 602 (1984). Petitioners conclude that, as in *Roquette Freres,* there is no evidence on the record in this case that accrual of the benefit is determined on the importation of an input product that could be used in the production of the exported merchandise from which the export benefit was calculated. Therefore, petitioners argue that the drawback adjustment should be denied.

Lloyd's responds that petitioners' arguments are baseless. Lloyd's contends that it has met both parts of the Department's two-part test. Specifically, Lloyd's argues that under the Passbook system there is a direct link between the import duty and the rebate of duties. Lloyd's explains that the credits recorded in the Passbook can only be given to the exporter upon exportation of certain items and the credit can only be used by the exporter to pay import duties. Lloyd's argues that, if a sufficient amount of credits exist in the Passbook, the Indian Customs Service does not collect duties. Lloyd's points out that the credit received is limited to the payment of customs duties by the exporter and that these credits are otherwise rendered useless. Lloyd's states that, in the instant case, it accrued benefits for import duties. Lloyd's further asserts that the verification documents provide evidence that there were sufficient raw materials on which Lloyd's paid duty and which were used in the production and subsequent export of subject merchandise.

Lloyd's states that the Passbook system is an international-trade incentive because it encourages and requires both imports and exports. Lloyd's states that the Passbook system requires the credits accrued to be applied toward import duties and the refund can be used for any purpose.

Lloyd's also indicates that the Passbook system allows Indian companies to select the most advantageous raw materials without regard to duties, which results in a savings in costs and sales prices.

Lloyd's argues that petitioners incorrectly characterize the Passbook program as an export-incentive program. Lloyd's explains that the Indian government changed its former system, the International Price Reimbursement Scheme, to its current Passbook system because it determined that the old scheme did not comport with the U.S. fair-trade statute. Lloyd's indicates that, under the new program, eligible export items and their corresponding import items are identified.

Lloyd's also rebuts petitioners' claim that Lloyd's I–O Norms allow for the importation of steel products that are not used in the production of the final exported merchandise. Lloyd's maintains that the products identified are steel products that are both authorized as qualifying goods and envisioned for use in the production of pipe and tube. Lloyd's asserts that it met the requirements that imports be sufficient to cover the amount of exports which Lloyd's argues it demonstrated at verification.

Lloyd's contends that the Passbook program can be easily distinguished from the program cited in *Roquette Freres*. In *Roquette Freres*, Lloyd's asserts, the Department denied the claimed drawback because the export credits were received regardless of whether the recipient had imported raw materials. Lloyd's maintains that, unlike the program cited in *Roquette Freres*, the credit Lloyd's received is dependent upon the identity and quantity of exported goods. Lloyd's further contends that, under the drawback program in *Roquette Freres*, imports were not required, whereas under the Passbook program, receipt of benefits are contingent upon the importation of materials.

Lloyd's maintains that the Passbook program meets the requirements under section 772(c)(1)(B) of the statute. Lloyd's states that this provision of the law applies to both rebates and the non-collection of duties. Lloyd's argues that there is no requirement in the statute that duties must first be paid and then rebated.

Department's Position

We disagree with petitioners. Section 772(c)(1)(B) of the Act provides that export price (or constructed export price) shall be increased by ''the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States' (emphasis added). As described in response to comment 1 above, we determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. Petitioners have not challenged the Department's determination regarding the second part of the test, that Lloyd's has demonstrated that it imported a sufficient amount of raw materials, or hot-rolled (HR) coils, used in the production of the final exported product. *See* Lloyds' Home-market Verification Report, at 11 (May 9, 1997).

As for the first part of the test, which petitioners have challenged, the Indian Passbook System presents the rare situation in which, rather than being rebated as is usually the case, the import duties were actually ''not collected, by reason of the exportation of the subject merchandise to the United States.'' This type of program falls within the express language of section 772(c)(1)(B). As described below, Lloyd's has demonstrated to our satisfaction that it met both parts of our two-part test.

The Indian Passbook system constitutes a proper drawback program. At verification, we examined Lloyd's claimed duty drawback and certain aspects of the Indian law which govern the application of the Passbook system. The system requires that the input used in the production of the final exported product be imported in order to obtain the drawback benefit. Under the program, the Indian government records all imports and exports in a ''passbook''. The government reduces the amount of duties owed on future imports, provided the final exported merchandise incorporates an amount of the input product equivalent to that which was previously imported and an equivalent amount of duties were previously suspended. As explained in our verification report, ''Lloyd's must show to the government that the exported product includes imported inputs in order to be credited the percentage charged for the imported goods' (emphasis added). Lloyds' Verification Report at 12.

We disagree with petitioners that payment of duties on the imported material is a prerequisite to receipt of benefits. As noted, section 772(c)(1)(B) requires either that the import duties be rebated or that they not be collected by reason of the exportation of the subject merchandise to the United States. Consequently, the Department has never established a strict prerequisite that import duties must actually be paid and subsequently rebated in order for there to be the necessary link justifying an adjustment to U.S. price. Nor have the courts established such a requirement. It is true, as petitioners note, that the CIT stated in *Far East Machinery* that payment of import duties is a ''prerequisite to receipt of an export rebate'' to qualify for an adjustment. 699 F. Supp. at 313. However, petitioners have taken the CIT's discussion of this issue out of context. In *Far East Machinery*, as in other cases, the respondent had actually paid duties upon importing the input and had received some amount of rebate upon exporting the subject merchandise. The question concerned only whether the government drawback program at issue established the necessary link between actual payment of the duties and receipt of the rebate. *See id.*; see also *E.I. DuPont de Nemours & Co.* v. *United States*, 841 F. Supp. 1237, 1242–43 (CIT 1993); *Huffy Corp., supra*, 632 F. Supp. at 53. The Department is not aware of any case in which the CIT has ruled upon a government drawback program, such as the Indian Passbook system, under which duties are suspended on imported inputs, provided the company subsequently exports merchandise containing an equivalent amount of the input as was imported, all of which is monitored by way of a credit-debit system. Therefore, these cases do not address the Department's present determination.

In this case, the Indian government has effectively suspended collection of duties on imported steel contingent upon the same company later exporting pipe containing an equivalent amount of steel. The Department has reviewed this type of program before. For instance, in Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review, 62 FR 1970, 1976 (January 7, 1997), the Department found that a certain Brazilian duty-drawback program suspended the payment of taxes or duties that ordinarily would have been due upon importation. The Department granted a duty-drawback adjustment to export price pursuant to section 771(c)(1)(B) of the Act. In Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review, 62 FR 33588, 33598–99 (June 20, 1997), a duty was imposed upon imported goods sold in the home market but not collected

when the subject merchandise incorporating those imported goods was exported. The Department ''add[ed] the amount of the uncollected duty to the U.S. price.''

Therefore, the issue in this review remains whether Lloyd's has established the necessary link between the government's collection—or, in this case, suspension—of import duties and the rebate, which in this case is a credit. The Department is satisfied that this link exists.

Further, we disagree with petitioners' contention that the Passbook system constitutes an export-restitution program rather than a duty-drawback program. For instance, the Passbook program differs from the export-substitution program administered by the European Community in *Sorbitol From France*. There, the Department denied the claimed drawback because export-restitution payments were received by exporters regardless of whether they used inputs that were imported or sourced domestically. The CIT upheld this determination in *Roquette Freres, supra,* 583 F. Supp. at 602–03. By contrast, the Indian Passbook program requires that the final exported product contain an equivalent amount of the input as was imported. At our verification of Lloyd's, we examined the provision of the Indian law requiring that a company ''show to the government that the exported product includes imported inputs.'' The raw materials referred to in this provision of the Indian law are the ''. . . imports of the input used in the exported product.'' Lloyds' Verification Report at 11.

*Comment 3*

Petitioners argue that the Department should reject Rajinder's reported steel costs, which petitioners contend contain numerous problems and deficiencies. Petitioners allege that (1) Rajinder's reported steel prices may not include freight costs; (2) although Rajinder made purchases from other suppliers, it reported its steel prices only on the prices based from the Steel Authority of India (SAIL) and the Department was not able to verify purchases made from other suppliers because Rajinder did not provide invoices for other suppliers; (3) the cost of steel reported in Rajinder's 1996 annual report is higher than the rates listed on the invoices at verification; (4) Rajinder never provided supporting documentation for its assumed scrap rate and, based on the verification report, it appears that the Department never verified the actual scrap rate; and (5) Rajinder grossly overstated the scrap value of steel. For these reasons, petitioners urge the Department to value scrap based on the ratio of the reported scrap price per metric ton to the average price of steel consumed and apply this ratio to the price of steel reported in the cost response.

Rajinder argues that its cost response indicates that transportation costs, along with other selling expenses, were included in the steel price. Rajinder also maintains that the Department verified its freight costs and found no discrepancies.

With respect to the issue of Rajinder's other suppliers, Rajinder argues that, although the verification report indicates that ''on rare occasions'' Rajinder purchased from other suppliers, it is unlikely that these rare purchases were made at prices higher than those made from SAIL. Rajinder also points out that not every invoice is required to be provided at verification. Rajinder maintains that the Department, nonetheless, found no discrepancies with Rajinder's reported steel costs.

Rajinder contends that petitioners have used an invalid approach to conclude that, on average, the cost of steel reported in Rajinder's annual report is higher than the price it reported. Rajinder also argues that there is nothing on the record or in the verification report that suggests that Rajinder's scrap rate is unreasonable or should not have been used. Rajinder states that the scrap value was verified and, therefore, should be accepted for the final results of review.

Department's Position

We agree with petitioners that freight costs are not included in the cost of steel, and we have added freight costs to Rajinder's reported steel costs for these final results of review. Although Rajinder reported the correct amount for steel costs, it neglected to include the amounts for freight which are clearly indicated on its invoices. Therefore, we have adjusted Rajinder's reported steel prices for freight costs. See Section B response, October 7, 1996, page B–7; Section D Supplemental Questionnaire response, March 18, 1997, page 8; and verification exhibit 22.

Concerning Rajinder's reported steel prices, we have accepted them for these final results of review. See Memo to the File, August 29, 1997.

Petitioners are incorrect that the cost of steel reported in Rajinder's 1996 annual report is higher than the rates listed on the invoices at verification. Petitioners compared the average cost of steel consumed for year-end 1996 to individual steel invoice prices. Petitioners determined an average cost of steel consumed by dividing the total value, in rupees, of iron and steel consumed by the total quantity of iron and steel consumed. This equation contains general values that are comprised of both steel and iron. However, iron is not a material used in the production of merchandise covered by the scope of this order. Further, the steel inputs in the numerator are not limited to the production of subject merchandise. Therefore, petitioners have incorrectly made a comparison between a broad spectrum of merchandise reported in Rajinder's financial statements and the individual steel invoice prices that are materials Rajinder used to produce merchandise subject to this review.

Petitioners' argument that the scrap value is too high, as well as petitioners' suggested alternative method for calculating the scrap value, are equally misplaced. Petitioners determined that the scrap value was too high by dividing a scrap resale value by the invoice value of a single transaction. This method is incorrect because the numerator is based on both subject and non-subject merchandise, whereas the denominator reflects subject merchandise only. However, scrap value can be easily and correctly derived by dividing the quantity of merchandise (*i.e.,* iron and steel) by the value of such merchandise (*i.e.,* iron and steel). Based on this method, the scrap value for either category of merchandise in the financial statement (i.e., material consumed or ending inventory) provides reasonable values upon which we can rely. Moreover, we verified these amounts and found no discrepancies. Therefore, there is no reason to suspect the reported scrap rate.

*Comment 4*

Petitioners argue that the Department should reject Rajinder's reported zinc costs. Petitioners argue that the zinc price and zinc scrap value Rajinder reported in its questionnaire response were understated and overstated, respectively, compared with the zinc price and zinc scrap value Rajinder reported in its annual report. Petitioners contend that, for the final results of review, the Department should make the necessary changes to the reported zinc price and zinc scrap value.

Rajinder states that, with respect to zinc costs, there is no reason to suspect that Rajinder overvalued its scrap adjustment. Rajinder states that virtually all cost data were verified and the Department found no discrepancies with the zinc cost data. Rajinder further maintains that the difference between amounts reported by Rajinder and the average cost for zinc that the

Department and the petitioners calculated can be attributed to the adjustments for excise and sales tax, as noted in the Department's verification report.

*Department's Position*

We disagree with petitioners. Reference to the amounts in the financial statement is not necessary here because we verified the reported amounts and are satisfied that use of these amounts is appropriate.

Rajinder also confuses the issue by arguing that the difference between the amount of zinc it reported and the average cost of zinc that the Department and petitioners calculated can be explained by an adjustment for excise and sales tax. As we stated in the verification report, excise and sales tax account for the difference between the cost per metric ton, reported in Indian rupees, and the average cost per metric ton of zinc purchased during the period of review (POR), also reported in Indian rupees. The comparison of these zinc costs to which Rajinder referred in its reply brief is different from the comparison of zinc costs that petitioners made, which focused on the figures reported for zinc price, zinc scrap value, and zinc consumed.

In conclusion, we are satisfied that the reported amounts were verified and accurately reflect Rajinder's costs. For the final results, we have accepted Rajinder's reported zinc price and scrap value.

*Comment 5*

Petitioners argue that the Department should reject Rajinder's reported variable, labor, and fixed overhead costs. Petitioners also contend that the Department should disregard Rajinder's response and apply adverse facts available because Rajinder refused to comply with the Department's request to provide labor and overhead costs on a product-specific basis. Petitioners point out that Rajinder stated in its supplemental questionnaire response that it could not provide the requested product-specific information because it does not maintain costs in the manner requested by the Department. Petitioners assert that, because Rajinder did not provide the requested information, costs for products with different physical characteristics were not differentiated. Petitioners further state that labor and overhead costs will be affected because pipes with different sizes and finish have different processing times and the number of pieces to handle will also be different. Petitioners also maintain that galvanized pipe will have higher labor and overhead costs than black pipe as a result of the pipe undergoing an additional galvanizing process.

Petitioners argue that respondents are often required to provide information in an antidumping proceeding that is different from the manner in which they maintain their records in the ordinary course of business. Petitioners also state that, because Rajinder requested this review, it should be held to the standard of providing information that conforms to the manner in which the Department calculates dumping margins. Petitioners maintain that, without the product-specific labor, variable, and overhead costs, the Department cannot perform accurate cost-of-production (COP) and CV analyses and difference-in-merchandise (difmer) adjustments.

Petitioners contend that, with respect to steel prices, steel scrap prices, zinc values, and zinc scrap values, the Department was unable to reconcile with Rajinder's financial statements information that was collected at verification. Petitioners argue that this provides additional grounds, in addition to Rajinder's refusal to provide labor, variable, and overhead cost information on a product-specific basis, for disregarding Rajinder's response and applying adverse facts available.

Rajinder states that it did not refuse to comply with the Department's request to report its labor, variable, and fixed overhead costs on a product-specific basis. Rather, Rajinder states, it did not have the necessary data in its cost system. Rajinder states that the verification report further supports its inability to provide the information as requested by the Department. For instance, Rajinder states that the verification report notes that labor and overhead costs were reported for one type of pipe; it also notes that Rajinder allocated costs on a mill-specific basis which Rajinder believes is more reasonable than if it had allocated the costs over all production from the various mills. Further, Rajinder contends that petitioners erroneously suggest that black pipe was used in Rajinder's calculations because galvanized pipe will have higher labor and overhead costs. Rajinder maintains that its labor and overhead costs were calculated for galvanized pipe only.

Rajinder maintains that it cooperated fully in this review, that it provided information based on its available records, and that the Department should accept its response. Rajinder concludes that it makes no sense for the Department to verify Rajinder's costs, find no discrepancies, use the information for the preliminary results of review, and then disregard the entire response because petitioners feel these costs should have been calculated differently.

Department's Position

We have determined that Rajinder's allocation of its reported labor and overhead costs (variable and fixed) was reasonable. The Department generally prefers that respondents report costs on a product-specific basis. However, in accordance with section 773(f)(1)(A) of the Act, our practice is to adhere to an individual firm's recording of costs, provided we are satisfied that such costs reasonably reflect the costs of producing the subject merchandise and are in accordance with the generally accepted accounting principles (GAAP) of the firm's home country. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan, 61 FR 38139, 38154 (July 23, 1996).

Rajinder provided its labor and overhead costs on a mill-specific basis. Rajinder used this methodology to record and allocate these costs in the company's ordinary course of business during the POR. See Rajinder's Supplemental Cost Response at 12, 26 (March 18, 1997). As we noted in the verification report, Rajinder produces merchandise at several mills. Black and galvanized pipe, merchandise subject to this review, were produced at two of these mills. Moreover, as stated in the verification report, black and galvanized pipe were also produced at separate mills. See Rajinder's Cost Verification Report, at 7 (May 9, 1997). The three home-market models of pipe that proved to be the most comparable matches to the models sold in the United States were all galvanized pipe. Each of these models passed the sales-below-cost test and were within the Department's twenty-percent difmer threshold. The record demonstrates that all of these comparable models were produced at the same mill. See Rajinder's Cost Questionnaire Response at 5 (January 22, 1997); Rajinder's Section B Questionnaire Response, Exhibit B–1 and B–2 (October 7, 1996); and Rajinder's Cost Verification Report at 7. In addition, all of the pipe exported to the United States was produced in the same mill. See id. Therefore, because we matched galvanized pipe sold in the United States to galvanized pipe of comparable size sold in the home market and because black pipe was not produced at the same mill at which the comparable models were produced, our calculations do not rely

on any averaging of costs for galvanized and black pipe.

Therefore, we have accepted Rajinder's allocation of its reported labor and overhead costs. We are satisfied that Rajinder's allocation methodology reasonably reflects its costs of producing the subject merchandise and it is in accordance with Indian GAAP.

*Comment 6*

Petitioners argue that the Department failed to include any sales from Rajinder's affiliate, Rajinder Steels Ltd. (RSL), in the preliminary margin calculations. Petitioners maintain that, for the final results of review, the Department should include RSL's sales in the price comparison because RSL manufactured and sold subject merchandise during the POR and RSL's reported sales transactions had control numbers that matched Rajinder's reported U.S. sales.

Rajinder responds that the Department properly excluded RSL's sales transactions from the margin calculation. Rajinder contends that only Rajinder sold subject merchandise to the United States. Rajinder also argues that its sales in the United States were comparable in size to home-market sales. Rajinder maintains that the Department is not required to use RSL's sales in the price comparisons or cost test because, as verified, the facilities of Rajinder and RSL are separate. Further, Rajinder states that there is no indication of price manipulation.

Department's Position

For purposes of the final results, we have treated RPL and RSL as a single entity, as described below.

As a precondition to ''collapsing'' two companies in an antidumping analysis, the Department must determine that the parties are ''affiliated'' within the meaning of section 771(33) of the Act. Section 771(33) provides several bases for finding affiliation. Subsection (F) of section 771(33) is applicable here. It provides that the definition of ''affiliated persons'' includes ''[t]wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person.'' Section 771(33) further explains that control exists when one person is ''legally or operationally in a position to exercise restraint or direction over another person.''

The Department's final regulations implementing the URAA elaborate upon the meaning of ''control'' under section 771(33). See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27380 (May 19, 1997) (§ 351.102(b)) (Final Regulations); see also Statement of Administrative Action (SAA), H.R. Doc. 103–316, at 838 (1994). The final regulations are not directly applicable to this review because the review was initiated prior to the date the regulations took effect. However, these new regulations do provide a concise and accurate statement of the Department's practice and the type of evidentiary criteria the Department has determined are relevant to a collapsing determination.

Section 351.102(b) of the Final Regulations provides that, in determining whether control exists for the purpose of finding affiliation, the Department will consider, among other things, corporate or family groupings, franchise or joint-venture agreements, debt financing, and close supplier relationships. See also SAA at 838. Rajinder refers to RPL and RSL as ''affiliated'' but also claims that they are ''independent'' companies, with their operational responsibilities managed by different sets of people. Rajinder argues that this is because the two companies have separate shareholders and separate operations—including accounts, commercial, manufacturing, and sales activities. As explained below, however, we find that these are immaterial differences and that RPL and RSL are affiliated on the basis of control.

The record demonstrates that RPL and RSL are ''manufacturing units'' within the ''Rajinder Group.'' See Rajinder's Supplemental Section A Response, Nov. 13, 1996, at 2–6 & Appendix 1 (Section A Supplemental); Rajinder's Section A Response, Aug. 20, 1996, at 10 (Section A Response). The two companies share four members of their boards of directors out of a total of seven board members for RPL and nine for RSL. RPL and RSL also share the same top-level management. Respondent also identified numerous other management and operational functions performed jointly on behalf of the entire Rajinder Group. Therefore, we determine that RPL and RSL, and the Rajinder Group as a whole, constitute a single ''corporate grouping,'' as contemplated in our final regulations and the SAA, which is under the common control, directly or indirectly, of the same person or persons, who are legally or operationally in a position to exercise restraint or direction over the entire Rajinder Group. Furthermore, we find that this ''relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise of foreign like product.'' Final Regulations, 62 FR at 27380 (§ 351.102(b)). On this basis, we determine that RPL and RSL are affiliated pursuant to section 771(33)(F) of the Act.

Section 351.401(f)(1) of the final regulations provides that, consistent with the Department's practice, the Department will collapse two or more affiliated producers (1) which have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and (2) the Department concludes that there is a significant potential for the manipulation of price or production. See Final Regulations, 62 FR at 27410 (§ 351.401(f)). Regarding the first requirement, Rajinder acknowledges that, like RPL, RSL produces and sells subject merchandise in the home market. Section A Supplemental at 2 and 6. According to Rajinder, this merchandise is ''similar'' to that exported by RPL to the United States. On this basis, we determine that RPL and RSL have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities.

Regarding the second requirement, whether ''there is a significant potential for the manipulation of price or production,'' section 351.401(f) explains that the factors the Department may consider include (1) the level of common ownership; (2) whether managerial employees or board members of one of the affiliated producers sit on the board of directors of the other affiliated person; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See also *FAG Kugelfischer* v. *United States*, 932 F. Supp. 315 (CIT 1996); Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42853 (August 19, 1996). Not all of these criteria must be met in a particular case; the requirement is that the Department determine that the affiliated companies are sufficiently related to create the potential of price or production manipulation. See, e.g., Final Regulations, 62 FR at 27346 (preamble); Flowers From Colombia, 61 FR at 42853.

We note that when affiliation is based upon control, as in the present review, there may be substantial overlap between the evidence relied upon to determine affiliation and that relied upon to determine whether there is a significant potential for the

manipulation of price or production. The decision of whether to collapse is normally dependent to one extent or another upon the potential of one or more persons or a part of a company to control another. As we have often stated, in collapsing, we look at the ''level of inter-relatedness between parties'' or the ''type and degree'' of the parties'' relationship or affiliation. See, e.g., Sulfanilic Acid from the PRC: Final Results of Antidumping Duty Administrative Review, 61 FR 53,711, 53,712 (1996) (citing *Nihon Cement* v. *United States,* 17 CIT 400, 426 (1993)); Final Results of Antidumping Duty Administrative Review; Iron Construction Castings From Canada, 59 FR 25,603, 25,603–04 (1994); Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18,992, 19,089 (1989).

We determine that this requirement is met as well. For the most part, we have based this determination upon the same evidence upon which we relied to determine that the two companies are affiliated. We consider the evidence regarding control and the overlap between the two companies' boards of directors and management sufficient to warrant concluding that RPL and RSL pose a significant potential for the manipulation of price or production. As detailed above, the boards of directors of the two companies broadly overlap. Moreover, three of the four overlapping directors also jointly manage the two affiliated companies. Along with the other evidence of control in the record, this evidence supports a finding that the two companies essentially function or have a significant potential to function as a single entity. There is also proprietary information on the record of common ownership and inter-company transactions within the Rajinder Group. This evidence is not complete, however, and we have not relied upon it in reaching our determination.

Based upon our analysis of the evidence on the record, we determine that RPL and RSL are affiliated pursuant to section 771(33)(F) of the Act; the two companies have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and, because of the extent of common control between the two companies, RPL and RSL pose a significant potential for manipulation of price or production. Therefore, we have collapsed and treated RPL and RSL as a single entity for purposes of calculating the appropriate dumping margin in these final results of review.

*Comment 7*

Petitioners requested that the Department conduct sales and cost verifications of the responses submitted by Lloyd's and Rajinder. Petitioners contend that the Department's failure to verify Lloyds' cost response and Rajinder's sales response is contrary to law. Petitioners state that, while the Department enjoys ''a degree of latitude in implementing its verification procedures,'' these procedures must be reasonable.

Petitioners state that, given the large number of inaccuracies in Lloyds' sales response presented to the Department officials at the outset of verification and the fact that Lloyd's is a first-time participant, it is plausible that Lloyds' cost response also contains numerous deficiencies. Petitioners assert that Lloyd's did not provide corrections to its cost response knowing that its cost response would not be verified. Petitioners conclude that the Department should either verify Lloyds' cost response prior to the final results of review or apply facts available.

As for Rajinder, petitioners argue that the company's failure to provide supporting documentation of price adjustments, its failure to allocate costs on a product-specific basis, and inaccuracies found at verification should have compelled the Department to conduct a more complete verification and are grounds to base the final results on adverse facts available.

Lloyd's states that the Department conducted a thorough five-day verification of Lloyds' response and there was no reason to suspect or find inadequate the verified information. Lloyd's argues that the Department's verification report is filled with conclusions of ''no discrepancies''. Lloyd's also asserts that it is unreasonable to throw out Lloyds' cost response because it presented minor corrections of its sales response at the outset of verification.

Lloyd's responds that the law does not require the Department to verify every aspect of a response. Lloyd's maintains that the Department has the discretion to determine which items it wishes to examine at verification. Further, Lloyd's asserts that it is common practice for a respondent to present corrections to its response that were discovered during the preparation for verification. Lloyd's also asserts that the corrections presented at verification were minor and did not undermine the reliability of Lloyd's response. Lloyd's adds that, as far as it knew, the Department intended to conduct a cost verification since the verification outline contained procedures for a cost verification. Lloyd's further states that its cost information was accessible for examination during the verification.

Rajinder responds that no verification is required in a new shipper review. Rajinder also states that the Department's decision to conduct only a cost verification of Rajinder's response is not contrary to law because no verification was required. Rajinder also argues that, because there were no discrepancies found with the verified data, there is no reason to assume that discrepancies would be found with non-verified data.

Department's Position

We have conducted this new shippers review in accordance with section 751(a)(2) of the Act and our regulations. Although a verification was not required by statute, the Department decided to verify the accuracy of both parties' submissions.

The courts have long agreed that verification is a selective procedure and the Department's ability to verify complete responses is constrained by limitations on time and resources. See, *e.g., Bomont Indus.* v. *United States,* 733 F. Supp. 1507, 1508 (CIT 1990). As in this case, it is not always practicable for the Department to conduct both sales and cost verifications of every company during every review. The Department has considerable latitude in picking and choosing which items it will examine in detail. See *Monsanto Co.* v. *United States,* 698 F. Supp. 275, 281 (CIT 1988) (citing *Hercules, Inc.* v. *United States,* 673 F. Supp. 454, 469 (CIT 1987)). It is enough for the Department ''to receive and verify sufficient information to reasonably and properly make its determination.'' *Hercules,* 673 F. Supp. at 471; see also Certain Internal-Combustion Industrial Forklift Trucks From Japan: Final Results of Antidumping Duty Administrative Review, 62 FR 5992, 5602 (February 6, 1997).

Therefore, contrary to petitioners' assertions, the fact that the Department could not devote the resources necessary to verify Rajinder and Lloyds' entire responses does not, standing alone, call those responses into question. Moreover, to the extent we found problems with those portions of the responses that we did verify, these problems were relatively minor and did not seriously call the responses into question, neither with respect to the portions we did verify nor those which we did not. See Forklift Trucks From Japan, 62 FR at 5602. For these reasons,

we have continued to rely upon both respondents' complete responses, except where indicated.

*Comment 8*

Rajinder contends that, for the final results of review, the Department should make a level-of-trade adjustment for the Channel One sales that were compared to U.S. sales because a pattern of price differences exists at the different levels of trade. Rajinder also contends that the Department should use the weighted-average price differences provided in Rajinder's questionnaire response. Rajinder states that the Department's inability to determine a pattern of consistent price differences should not work to the disadvantage of respondents, particularly since the information has already been provided on the record. Further, Rajinder maintains that, until the Department formulates a satisfactory methodology of determining consistent price differences, the pricing differences presented by a respondent should be valid indicators that such differences exist at the different levels of trade and should be used by the Department as the pricing differences between the different levels of trade.

Petitioners respond that the Department should not grant a level-of-trade adjustment. Petitioners claim that Rajinder has not demonstrated that a pattern of different price levels exists. Petitioners assert that Rajinder's calculation of the price differential is flawed and that the statute requires more than the comparison of two average prices. According to petitioners, the statute requires that prices be reviewed on a product-specific basis. Petitioners also argue that the difference in prices must be measured against net prices, exclusive of all statutory adjustments, in order to ensure no double counting occurs. Citing Certain Carbon Steel Pipe and Tube From Turkey, 61 FR 69,067 (December 31, 1996), petitioners maintain that the Department has applied these minimum standards in other cases.

Department's Position

Rajinder reported two channels of distribution in the home market: (1) Sales to government agencies, original equipment manufacturers, and end-users (Channel One); and (2) sales to local distributors and trading companies (Channel Two). In our preliminary results, we determined, based on an analysis of the selling functions performed and the point in the chain of distribution where the sale takes place, that these two channels constituted two different levels of trade in the home market.

With respect to the U.S. market, Rajinder reported that all sales were made through one channel of distribution, a local distributor. For our preliminary results, we determined that the CEP sales constituted a single level of trade. Further, we found that, although there were differences in terms of selling activities performed in Channel Two in the home market and the CEP sales in the United States, these differences in selling functions were not alone sufficient to establish a difference in the level of trade. We did find that a difference in the level of trade existed between Rajinder's CEP sales and Channel One sales in the home market. For certain CEP sales where we found that sales of identical matches took place only at the Channel One level of trade, we matched these sales to sales at the Channel One level of trade. However, because we were unable to determine the extent of any pattern of consistent price differences between the two home-market channels of distribution, we did not make a level-of-trade adjustment. We did, however, apply a CEP-offset adjustment in the preliminary results.

As we stated in the preliminary results, we continued to examine the issue of level of trade in this review. After a more in-depth analysis, we confirm our preliminary findings that there are two different levels of trade in the home market and that sales to Channel Two are made at the same level as the sales to the United States. Since some products did not have a match at the same level of trade, we reexamined the issue of whether we should have granted Rajinder a level-of-trade adjustment.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in levels of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market. Any price effect must be manifested in a pattern of consistent price differences between home market sales used for comparison and sales at the equivalent level of trade of the export transaction. To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. If we find a pattern of consistent price differences, we use the average difference in net prices to adjust normal value when normal value is based on a level of trade different from that of the export sale. If there is no pattern of consistent price differences, the difference in levels of trade does not have a price effect and, therefore, no adjustment is necessary. See Preliminary Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom, 62 FR 31566 (June 10, 1997).

In its October 7, 1996, submission Rajinder presented its calculations of a level-of-trade adjustment. However, Rajinder provided no evidence that the prices it used for its analysis were net prices or that the calculations were done on a model-specific basis.

Therefore, we determined whether there was a pattern of consistent price differences between the different levels of trade in the home market. We made this determination by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two levels of trade. If the average prices were higher at one of the levels of trade for a preponderance of the models, we considered this to demonstrate a pattern of consistent price differences. We also considered whether the average prices were higher at one of the levels of trade for a preponderance of sales, based on the quantities of each model sold, in making this determination. For Rajinder, we found a pattern of consistent price differences. We applied the average percentage difference to the adjusted normal value as the level-of-trade adjustment. See Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, 62 FR 2081, 2105 (January 15, 1997).

*Comment 9*

Rajinder argues that, if the Department uses a CEP-offset adjustment for the final results of review, it must correct the home-market indirect selling expenses figure the Department used in this calculation. Rajinder explains that, while the Department's CEP-offset amount is intended to represent home market indirect selling expenses in dollars per metric ton, it did not calculate it correctly. Rajinder states that the Department divided the total reported indirect selling expenses by the total sales quantity to obtain the numerator in rupees per metric ton. However, Rajinder notes that the total indirect selling expenses were already reported on a per-metric-ton basis, causing the

Department to make a lower CEP-offset adjustment. Rajinder states that record evidence shows that the rupee figure is already reported on a per-metric-ton basis and that the Department should correct this error for the final results of review.

Petitioners respond that, should the Department change the calculation of home-market indirect selling expenses as Rajinder requests, it must make several other changes to the calculations as well. Petitioners repeat their comment concerning commissions (discussed in comment 13, below). Petitioners assert that the Department must ensure that deductions from normal value for indirect selling expenses are also deducted from the home-market price in the below-cost-sales analysis.

Department's Position

We agree with Rajinder that the amount it reported for indirect selling expenses was already on a metric-ton basis. We have corrected this clerical error for the final results.

Further, in conducting the cost test, we adjust normal value and do not include all deductions that we make to the weighted-averaged normal value. In doing this we adjust normal value to a level comparable to the reported COP, not to a level comparable to U.S. sales. In particular, although adjusted normal value reflects all actual deductions, it does not include deductions for expenses such as credit or inventory carrying cost. Moreover, both parties' comments concerning commissions and appropriate CEP offset are irrelevant since the Department has determined not to use a CEP offset as described in response to comment 8, above.

Finally, we have addressed petitioners' argument concerning commissions and the appropriate CEP offset in response to comment 13, below.

*Comment 10*

Petitioners state that, for Rajinder's U.S. sales, the Department incorrectly calculated gross unit price on a metric-ton basis. Further, they state that the Department used the incorrect conversion factor to translate net-ton gross unit prices into metric-ton gross unit prices which, according to petitioners, resulted in an overstatement of gross unit prices. Petitioners provide instructions on how to calculate gross unit price properly on a metric-ton basis for the final results of review.

Rajinder agrees that the Department applied the incorrect conversion factor to translate net-ton gross unit prices into metric-ton gross unit prices. Rajinder also claims, however, that, aside from the gross unit price, many other deductions were overstated because the Department used the incorrect conversion factor to convert all U.S. expenses to a metric-ton basis. Rajinder recommends that the Department correct all deductions, in addition to the gross unit price, that were affected by this conversion error. Rajinder states that the Department also incorrectly converted the adjustment for ''Inland Freight-Plant to Distribution Warehouse'' into metric tons because it had reported this adjustment on a metric-ton basis.

Department's Position

We agree with both petitioners and Rajinder that we converted the gross unit price and selling expenses incorrectly for the preliminary results. We have examined all conversions, including Inland Freight-Plant to Distribution Warehouse, as recommended by Rajinder and petitioners and have corrected them for the final results.

*Comment 11*

Petitioners state that, although the preliminary analysis memo indicated a deduction, the Department failed to deduct Rajinder's U.S. commissions from CEP. Petitioners request that the Department make this deduction for the final results of review.

Rajinder agrees that the Department failed to deduct U.S. commissions from CEP. Rajinder explains that the Department's failure to make this deduction has no effect on the margins, however, because the Department inadvertently did not make the deduction for commissions in calculating normal value. Rajinder suggests that, if the Department makes a deduction from CEP starting price for U.S. commissions, it must offset that deduction with a corresponding deduction from normal value for commissions or, as appropriate, indirect selling expenses, in accordance with 19 CFR 353.56(b)(1). Thus, Rajinder claims, the net effect of this adjustment would be zero.

Department's Position

The Department agrees with both parties. In the preliminary results, we neglected to deduct commissions from either CEP or normal value. In accordance with 19 CFR 353.56(a)(2), the Department makes reasonable allowances for differences in circumstance of sale, including commissions. For the final results, we have deducted commissions from both CEP and normal value, using the amounts reported in the response. Where Rajinder has a commission on the U.S. sale but no home-market commission, we have adjusted normal value by using home-market indirect selling expenses as an offsetting commission to the commission in the U.S. market. See our response to comment 13.

*Comment 12*

Petitioners claim that the Department incorrectly calculated the CEP-profit ratio by dividing the total selling expenses reported by Rajinder and RSL in their financial statements by the profit reported in the financial statements. Petitioners state that, to calculate total expenses in accordance with section 772(f)(2)(C) of the Act, the Department should use the expenses incurred in order of preference (1) on subject merchandise sold in the home and U.S. markets, (2) the narrowest category of merchandise sold in the United States and home market that contains the subject merchandise, or (3) the narrowest category of merchandise sold in all countries that contains the subject merchandise. Petitioners claim that the Department should have used the sales and profit data for the foreign like product as a basis for the CEP-profit calculation, as required by the statute, instead of relying on data at the overall sales level from the financial statements, which is the third choice under section 772(f)(2)(C) of the Act.

Additionally, petitioners claim that the CEP ratio used by the Department in the preliminary margin calculation contained a misplaced decimal point which should be corrected. Petitioners also contend that the Department must include commissions in the U.S. selling expenses when it calculates CEP profit for the final results of review.

Rajinder states that, because the Department made a clerical error in applying the calculated CEP-profit ratio, the ratio the Department applied is grossly different than the CEP ratio that the Department actually calculated. Provided the CEP ratio for the final results of review does not change, Rajinder contends that the Department should use the ratio that it actually calculated. Rajinder explains that any change the Department makes to the calculation of the CEP ratio may produce lower, if not *de minimis*, CEP-profit figures than the ratio that the Department actually calculated for the preliminary results of review.

Department's Position

We agree with the petitioners in part. We used information from the financial statements to determine CEP profit in

our preliminary results, which is the third preference under section 772(f)(2)(C) of the Act. Because COP information was reported for only an extraordinarily small portion of its pipe sales in the home market, in this case, we have continued to use profit levels which we calculated from the financial statements.

We agree that there were several ministerial errors in the calculation of CEP profit which caused us to understate CEP profit. We have reexamined Rajinder's financial statements and have made several changes to the profit calculation. We added the amounts listed as ''variation in stock'' to the total revenue amounts. We added interest expense and depreciation expense to total cost and then subtracted an amount for change in inventory from total cost. We divided total revenue by total cost to arrive at the CEP-profit figure. Additionally, when applying this percentage to U.S. expenses, no change is necessary as petitioners suggest because we have already included commissions in the denominator.

*Comment 13*

Petitioners state that, according to the analysis memorandum prepared for Rajinder for the preliminary results, the Department deducted both the indirect selling expenses and the CEP offset from normal value and, as a result, some indirect selling expenses were deducted twice. Petitioners claim that indirect selling expenses should not be deducted from the home-market gross unit price to calculate net home-market price because these expenses can only be deducted as a CEP offset when comparing sales at different levels of trade. Petitioners state, that as a circumstance-of-sale (COS) adjustment, commissions and indirect selling expenses may be deducted from net home-market price up to the amount of U.S. commissions. Petitioners contend that, when a COS adjustment is based on the amount of home-market indirect selling expenses (limited by the U.S. commission amount), the CEP offset cannot include those expenses that were already deducted from the net home-market price through the commission-offset step.

Rajinder responds that, contrary to petitioners' assertion, the preliminary calculations demonstrate that home-market indirect selling expenses were not deducted from net home-market price. Therefore, these expenses were not double counted. Rajinder states that home-market inventory carrying costs were not deducted from normal value and, since they are post-sale expenses, they are direct costs and normal value should be adjusted to account for these costs.

Department's Position

Since the Department has determined that a CEP-offset adjustment is not appropriate, both petitioners' and Rajinder's comments are moot. *See* our response to comment 8 above.

*Comment 14*

The petitioners state that the Department must apply a difmer adjustment because the products sold in the United States and home market are not identical.

Rajinder claims that the petitioners' assertion that the Department should have adjusted normal value upward is incorrect. Rajinder states that evidence on the record indicates that the total cost of manufacture for pipe sold in the United States is less than the cost of manufacture for the comparable pipe sold in India. Rajinder adds that, if the Department adjusts for difmer, the adjustment should be a deduction from, not an addition, to normal value.

Department's Position

We agree with the petitioners that a difmer adjustment should be applied because the products are not identical. The third matching characteristic, wall thickness, varies slightly for the subject merchandise sold in the United States. Therefore, in accordance with section 773 (a)(6)(C)(iii), a difmer adjustment is appropriate to account for this difference.

We have calculated the difmer adjustment by subtracting the variable cost of manufacture for the closest model match in the home market from the variable cost of manufacture for each U.S. sale. We then added the difmer amount to normal value.

*Comment 15*

Petitioners state that the Department incorrectly calculated Rajinder's interest expense in the COP calculation. Petitioners claim that it not clear where the Department obtained the figures it used to calculate COP. According to petitioners, the COP figures the Department used were different from those which Rajinder reported in its supplemental cost-questionnaire response. Petitioners recommend that the Department correct its COP analysis based on the more recent supplemental cost-questionnaire response Rajinder submitted.

Rajinder disagrees with petitioners. Rajinder explains that the Department's COP calculation is different from the COP reported by Rajinder in its supplemental cost-questionnaire response because the reported HM gross unit prices do not include taxes, whereas the data reported in the supplemental cost-questionnaire response do include taxes. Rajinder claims that the Department properly calculated COP because the taxes excluded from gross unit price must also be excluded from the cost calculation for comparison purposes.

Department's Position

We disagree with both parties. In its supplemental cost response, Rajinder reported separate interest-expense calculations for Rajinder and its affiliated party, RSL. In situations involving affiliated parties, it is sometimes appropriate for the Department to calculate the interest expense based on the operations of the consolidated corporation. See Ferrosilicon From Brazil: Final Results of Antidumping Duty Administrative Review, 61 FR 59407, 59412 (Nov. 22, 1996); Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review, 61 FR 18547, 18567 (April 26, 1996). This is because ''debt is fungible and corporations can shift debt and its related expenses toward or away from subsidiaries in order to manage profit.'' Ferrosilicon From Brazil, 61 FR at 59412. Therefore, the Department calculates COP using the consolidated financing expenses of the corporation or the affiliated parties whenever the parent or the controlling entities have ''the power to determine the capital structure of each member company within the group.'' Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937, 21946 (May 26, 1992). This is particularly the case when the Department determines to collapse two or more affiliated parties, as here. See our response to comment 6, above.

Therefore, in this case, we used the combined financial statements of Rajinder and RSL to recalculate the interest expense by dividing the reported interest expense by the sum of the cost of goods sold plus the depreciation. This yields an applicable ratio representative of the interest expenses of both companies combined. Contrary to petitioners' recommendation to use the reported amounts in the supplemental response, the Department has used the recalculated amounts that it used in the preliminary results. Rajinder's argument that taxes were excluded from this calculation is irrelevant.

*Comment 16*

Petitioners claim that there were serious deficiencies in Lloyds' cost response which the Department never examined. Petitioners claim that Lloyd's purchased coils from an affiliated party and, while Lloyd's claims the purchases were at arm's length, the transfer price of coils from unaffiliates were on average seven percent higher than prices from the affiliate. Petitioners recommend that the Department disregard the steel prices from Lloyds' affiliate and use the average from unaffiliated parties.

Additionally, petitioners assert that Lloyd's did not report labor and overhead costs to account for differences in physical characteristics. Petitioners explain that Lloyd's allocated all costs by tonnage which failed to differentiate the costs for products with different physical characteristics. Petitioners state that pipes with different sizes and finish have different processing times and the number of pieces to handle will be different which ultimately affects labor and overhead costs. Petitioners explain that, since Lloyds' COP and CV calculations are based on inherently flawed and distorted data, the Department is unable to perform an accurate COP analysis. Petitioners reason that respondents are often required to provide information in an antidumping review that is different from the manner in which they maintain their records in the ordinary course of business. Petitioners claim that, since Lloyd's requested this review, Lloyd's should be held to the standard of providing information that conforms to the manner in which the Department calculates dumping margins. Petitioners remark that the Department requested that Lloyd's provide information on a product-specific basis and declined to do so; therefore, Lloyd's has withheld information and impeded this review which is grounds for applying facts available. Petitioners state that, absent this information, the Department cannot perform accurate COP and CV analyses and difmer adjustments.

Lloyd's responds that petitioners have no basis to question that purchases from affiliated suppliers were priced lower than purchases from unaffiliated suppliers. Lloyd's argues that petitioners merely make an observation from one exhibit on the record which demonstrates price fluctuation. Lloyd's points out that prices from affiliated suppliers were not consistently higher or lower than prices from unaffiliated suppliers. Lloyd's claims that, in fact, several purchases from affiliated suppliers were priced lower than purchases from unaffiliated suppliers. Lloyd's states further that these fluctuations in price are indicative of price negotiation and that seven percent is not a meaningful difference in price.

Lloyd's states that, contrary to petitioners' claim, it properly reported labor and overhead costs. Lloyd's claims that it sold only one type of pipe in the United States and that the variable costs for producing pipe do not vary significantly depending on the type of steel pipe reported. Lloyd's maintains that, since the Department agreed with Lloyds' choice of home-market sales to report (black, plain end, non-galvanized pipe), there were no significant differences in physical characteristics such as size, surface finish or end finish and, accordingly, no significant differences in labor and overhead costs to report. Lloyd's explains that it differentiates and allocates its costs in the normal course of business, a methodology the Department accepts when the allocation of costs is reasonable (citing Final Determination of Sale at Less Than Fair Value: Fresh Cut Roses From Colombia, 60 FR 6980, 7015 (Feb. 6, 1995)). Lloyd's claims that petitioners make reference to the higher costs associated with galvanizing steel pipe and manufacturing threaded and coupled pipe, but that petitioners fail to take into account that Lloyds' reported sales did not included galvanized, threaded or coupled pipe. Additionally, Lloyd's explains that it did report a difference in U.S. packing costs which were approximately 30 percent higher than home-market packing costs, due to extra costs associated with packing for international shipment.

Department's Position

We agree in part with both parties. Concerning the costs of hot-rolled coil, we have used the average price listed for other home-market suppliers from Exhibit 3 of the March 17, 1997 submission. We found that the purchases from Lloyd's Steel Industries Ltd. (LSIL), Lloyds' affiliated supplier, were nearly all lower in price than those from the other home-market suppliers. While Lloyd's claims that its purchases of hot-rolled coil from LSIL were at arm's-length prices, the evidence on the record indicates otherwise. When, as here, the transfer price between affiliated parties is significantly lower than the price from unaffiliated suppliers, the respondent bears the burden to provide evidence that the affiliated-party's transfer prices were at arm's-length. *See* section 773(f)(2) of the Act. Lloyd's failed to provide such evidence. Therefore, we have not relied upon Lloyds' steel prices from LSIL and have instead relied entirely upon the price from the unaffiliated home-market suppliers in our calculations of steel material values.

Concerning the reporting of labor and overhead costs, we agree with Lloyd's. We found that Lloyds' allocation of its labor and overhead costs was reasonable. Because Lloyds' U.S. sales consisted of only one type of pipe (black, plain-end pipe), the Department permitted Lloyd's to limit its home market data base to those sales which Lloyd's considered most similar to the sale made in the United States, conditioned upon the Department agreeing with Lloyds' model-match selections. The appropriate model matches submitted by Lloyd's were all black, plain-end pipe. Therefore, contrary to petitioners' assertion, Lloyd's was not required to differentiate costs for products with different physical characteristics; such products were simply not used for matching purposes.

Lloyd's reported its costs for the home market, including labor, on a product-specific basis. This reflects Lloyd's cost-recording methodology used in its ordinary course of business. *See* Section D Questionnaire, January 22, 1997, page 21. Furthermore, petitioners incorrectly claim that Lloyd's allocated its costs by tonnage. Lloyd's explained that it allocated the product-specific costs associated with the production of the subject merchandise on the basis of the quantity and time required in the mill to produce the product. *See* Section D Supplemental Response, March 17, 1996, page 8.

*Comment 17*

Petitioners state that the Department should deduct U.S. customs duties indicated in verification exhibit 10 from export price. Petitioners claim that, because Lloyd's is the importer of record, it is responsible for the payment of the duties.

Lloyd's responds that it did not pay the U.S. customs duties. Lloyd's explains that, with respect to most commercial imports, the buyer typically pays U.S. customs duties and then seeks reimbursement from the party contractually responsible. Lloyd's points to its supplemental questionnaire response which states that in this case, the buyer of Lloyds' merchandise was responsible for paying the U.S. customs duties. Lloyd's concludes that the Department should not deduct import duties from export price.

Department's Position

We agree with petitioners. Lloyd's is the importer of record and, therefore, ultimately responsible for the payment of duties. Although record evidence indicates that Lloyd's sent a letter to the U.S. buyer making the buyer responsible for paying the U.S. customs duties, we have no evidence that the customer either accepted these terms or paid the duties. We, therefore, determine that Lloyd's was responsible for the payment of the U.S. duties, and we have deducted the regular duties from the export price.

*Comment 18*

Rajinder contends that the Department improperly failed to deduct certain expenses from home-market sales prices. Rajinder maintains that the Department's preliminary analysis memorandum states that the Department intended to deduct, among other things, commissions, advertising and inventory carrying costs in the calculation of normal value. However, Rajinder argues, the printouts released at disclosure indicate that the Department failed to make these deductions, and Rajinder requests that the Department correct this error for the final results of review.

Petitioners respond that the Department may deduct from normal value commissions and advertising expenses as circumstance-of-sale adjustments. Petitioners also respond that the Department may deduct from normal value indirect selling expenses, such as inventory carrying costs, as a CEP offset where two markets are being compared at different levels of trade.

Department's Position

We agree with both parties that we should have adjusted home-market prices for advertising and commission expenses. With respect to advertising expenses, Rajinder reported these expenses as direct in nature although it was not able to tie these expenses to the specific models of merchandise under review. Rajinder states in its response that, ''advertising expenses are incurred only to advertise the merchandise to small farmers, retailers, and households.'' Hence, the advertising expenditures are aimed at the Rajinder's customer's customer and, therefore, the reported expenses are direct.

We agree with Rajinder that commissions should be treated as direct expenses which we have deducted from normal value. Where Rajinder reported commissions in only the U.S. market, we have offset this expense by deducting the home-market indirect selling expenses by an equivalent amount.

Because we have not applied a CEP offset to normal value, the inclusion of inventory carrying costs in Rajinder's indirect selling expenses pool is irrelevant.

*Comment 19*

Rajinder states that the Department improperly deducted inland freight from U.S. prices for the distance from the plant to the warehouse in India. Rajinder explains that the Department incorrectly converted the inland freight expense into rupees per metric ton, thereby overstating the deduction of inland freight from U.S. price. According to Rajinder, the record provides evidence that this expense was already reported on a per-metric-ton basis. Rajinder states that the Department should correct this error for the final results.

Petitioners respond that the Department should ensure that all adjustments are properly converted on a per-metric-ton basis for both the price-to-price and below-cost-sales analyses.

Department's Position

We agree with Rajinder that by making the wrong conversion we improperly calculated the deduction of inland freight from plant to warehouse. We have corrected this error for these final results. Additionally, as suggested by petitioners, we have reexamined all of the adjustments for normal value, U.S. price, and the below-cost-sales analysis to ensure that we have converted them to the correct units.

**Final Results of Review**

As a result of our analysis, we have determined that the following weighted-average margins exist for the period May 1, 1994, through April 31, 1995:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Rajinder | 25.45 |
| Lloyd's | 0.00 |

The results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by these final results and for future deposits of estimated duties. The posting of a bond or security in lieu of a cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and section 353.22(h)(4) of the Department's regulations, will no longer be permitted for these firms.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an exporter/importer-specific assessment rate for both companies. For each respondent we have divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of respondents' entries during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of Indian pipe and tube entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above; (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 the less than fair value 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. In accordance with the CIT's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul* v. *United States*, Slip Op. 93–83, the cash deposit rate for all other manufacturers or exporters will be 7.08 percent, the rate determined in the original less than fair value investigation (51 FR 9089, March 17, 1986).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a 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 the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). 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 the terms of an APO is a sanctionable violation. Failure to comply is a violation of the APO.

This administrative review and this notice are in accordance with section 751(b) of the Act (19 U.S.C. 1675(b)(1)) and 19 CFR 353.22(h)(1997).

Dated: August 29, 1997.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97–23994 Filed 9–9–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–073. Applicant: Research Foundation of The City University of New York, 79 Fifth Avenue, New York, NY 10003. Instrument: Electron Paramagnetic Resonance Spectrometer, EMX Series. Manufacturer: Bruker Instruments, Germany. Intended Use: The instrument will be used for studies of Lithium-transition metal insertion compounds; prefluorinated polymers prepared by chemical or radiation crosslinking. Investigations will be conducted to determine the correlation between EPR spectroscopic parameters and electrical properties of the materials, the goal of which is to better understand the atomic/molecular level processes associated with electrical conductivity. Application accepted by Commissioner of Customs: August 21, 1997.

Docket Number: 97–074. Applicant: Case Western Reserve University, School of Medicine, Department of Biochemistry, 10900 Euclid Avenue, Cleveland, OH 44106. Instrument: Stopped-Flow Spectrometer, Model SX.18MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: The instrument will be used to investigate the kinetics of the interaction between biological macromolecules and ligands in experiments conducted to: (1) Monitor the interaction between RNA polymerase and double stranded DNA, (2) monitor the interaction of cinnamoyl-CoA substrates with enoyl-CoA hydratase and (3) monitor the interaction of transcription factors with ribosomes. Application accepted by Commissioner of Customs: August 22, 1997.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 97–23996 Filed 9–9–97; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–508–605]**

### Industrial Phosphoric Acid From Israel: Preliminary Results and Partial Recission of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on industrial phosphoric acid from Israel for the period January 1, 1995 through December 31, 1995. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review*. Interested parties are invited to comment on these preliminary results. See *Public Comment* section of this notice.

**EFFECTIVE DATE:** September 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Christopher Cassel or Lorenza Olivas, Office CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4847 or (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 19, 1987, the Department published in the **Federal Register** (52 FR 31057) the countervailing duty order on industrial phosphoric acid from Israel. On August 12, 1996, the Department published a notice of ''Opportunity to Request Administrative Review'' (61 FR 41768) of this countervailing duty order. We received a timely request for review, and we initiated the review, covering the period January 1, 1995 through December 31, 1995, on September 17, 1996 (61 FR 48882).

In accordance with 19 C.F.R. 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (Rotem) and Haifa Chemicals Ltd. (Haifa). Haifa did not export the subject merchandise during the period of review. Therefore, we are rescinding the review with respect to Haifa. This review also covers nine programs.

Pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended, we extended the preliminary results to no later than September 2, 1997, and the final results to 120 days from the date on which these preliminary results are published. See Certain Industrial Phosphoric Acid from Israel; Extension of Time Limit for Countervailing Duty Administrative Review, 62 FR, 23220.

### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

**Scope of the Review**

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

**Verification**

As provided in section 782(i) of the Act, we verified information submitted by the Government of Israel and Rotem. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

**Subsidies Valuation Information**

*Period of Review*

The period for which we are measuring subsidies (the POR) is calendar year 1995.

*Allocation Period*

In *British Steel plc.* v. *United States,* 879 F.Supp. 1254 (February 9, 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, which was articulated in the General Issues Appendix appended to the Final Countervailing Duty Determination; Certain Steel Products from Austria, 58 FR 37225 (July 9, 1993) (*GIA*)). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsidies is a company-specific average useful life (AUL). This remand determination was affirmed by the Court on June 4, 1996. *British Steel,* 929 F.Supp 426, 439 (CIT 1996). Accordingly, the Department has decided to acquiesce to the *British Steel* decision where reasonable and practicable.

Rotem submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. Rotem's AUL was derived by adding depreciation charges for ten years, and dividing these charges by the sum of average gross book value of depreciable fixed assets for the related periods. We found this calculation to be reasonable and consistent with our company-specific AUL objective. Rotem's calculation resulted in an average useful life of 24 years, and we have used this calculated figure for the allocation period for non-recurring subsidies received during the POR.

For non-recurring subsidies received prior to the POR and which have already been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not reasonable or practicable to reallocate those subsidies over a different period of time. Since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulting benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the total amount countervailed and, thus, would result in the possibility of over-countervailing or under-countervailing the actual benefit. Therefore, for purposes of these preliminary results, the Department is using the original allocation period assigned to each nonrecurring subsidy received prior to the POR. See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, 62 FR 16549 (April 7, 1997).

*Privatization*

(I) Background

Israeli Chemicals Limited (ICL), the parent company which owns 100 percent of Rotem's shares, was partially privatized in 1992, 1993 and 1994. In this administrative review, the Government of Israel (GOI) and Rotem reported that additional shares of ICL were sold in 1995. We have previously determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest. See Final Results of Countervailing Duty Administrative Reviews; Industrial Phosphoric Acid from Israel, 61 FR 53351, 53352 (October 11, 1996) (1994 Final Results).

In this review and prior reviews of this order, the Department has found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations. Further, the Department has found that a portion of the price paid by a private party for all or part of a government-owned company represents partial repayment of prior subsidies. See GIA, 58 FR at 37262. Therefore, in the 1992 and 1993 reviews, we calculated the portion of the purchase price paid for ICL's shares that is attributable to repayment of prior subsidies. In the 1994 review, respondents reported that the GOI sold less than 0.5 percent of its shares in ICL. Because this percentage of shares privatized was so small, the percentage of subsidies potentially repaid through this privatization could have no measurable impact on Rotem's overall net subsidy rate. Therefore, we did not apply our repayment methodology to the 1994 partial privatization. See the 1994 Final Results, 61 FR at 53352. However, we are applying this methodology to the 1995 partial privatization of ICL during the POR because 24.9 percent of ICL's shares were sold. This approach is consistent with our findings in the GIA and Department precedent under the URAA. See e.g., GIA, 58 FR at 37259; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review, 61 FR 58377 (November 14, 1996); and Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy, 61 FR 30288 (June 14, 1996).

(II) Modification of Calculation Methodology

As noted above, in the 1992 and 1993 administrative review of this order, we determined that the partial privatization of ICL, Rotem's parent company, represented partial privatization of Rotem. Therefore, in each of those reviews, we calculated the portion of the purchase price paid for ICL's shares that was attributable to repayment of prior subsidies. Under this methodology, to determine the amount of subsidies that are extinguished due to privatization or reallocated as a result of changes in ownership, we calculate the net present value (NPV) of the remaining subsidies at the time of privatization or change in ownership. For example, if the privatization took place in 1993, the net present value calculation for that transaction would include all subsidies allocable to 1993. However, as in all other cases involving privatization or change in ownership, in each subsequent review, we then recalculated the amount of subsidies that were extinguished or reallocated by using only those subsidies affecting that subsequent review. In this case, for example, if the privatization took place in 1993, in the next administrative

review, 1994, we would recalculate the NPV using only those subsidies still allocable to 1994, i.e., the subsidies still benefitting the company in 1994.

We revisited that methodology in the 1995 countervailing duty administrative review of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review, 62 FR 16555, 16557 (April 7, 1997). In that review, we preliminarily determined that it is not appropriate to modify the calculation of the NPV of the subsidies existing at the time of sale. The change in ownership of a company is a fixed event at a particular point in time. Thus, the percentage of subsidies that may be extinguished due to privatization or reallocated due to a change in ownership in a given year is also fixed at that same point in time and does not change. Therefore, the pass-through percentage will no longer be altered once it has initially been determined in an investigation or administrative review. We have modified the ICL privatization calculations in this administrative review to reflect the change outlined above.

**Analysis of Programs**

*I. Programs Previously Determined To Confer Subsidies*

(A) Encouragement of Capital Investments Law (ECIL) Grants

This GOI grant program is designed to encourage the distribution of the population throughout Israel, to create new sources of employment, to aid the absorption of immigrants, and to develop the economy's production capacity. To be eligible for benefits under the ECIL, including investment grants, capital grants, accelerated depreciation, reduced tax rates, and certain loans, applicants must obtain approved enterprise status. Investment grants cover a percentage of the cost of the approved investment, and the amount of the grant depends on the geographic location of eligible enterprises. For purposes of the ECIL program, Israel is divided into three zones—Development Zone A, Development Zone B, and the Central Zone—and the level of grant funding differs in each zone.

In Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel, 52 FR 25447 (July 7, 1987) (IPA Investigation), the Department found the ECIL grant program to be *de jure* specific because the grants are limited to enterprises located in specific regions. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of this determination.

Rotem is located in Development Zone A, and received ECIL investment, drawback, and capital grants in disbursements over a period of years for several projects. As explained in the ''Allocation Period'' section above, for grants provided that have already been allocated in past administrative reviews, we are continuing to use the ten-year allocation period. For grants received during the POR, we followed the company-specific allocation methodology and allocated these grants over Rotem's company-specific AUL of 24 years.

Under our past practice we used a discount rate based on the cost of fixed-rate long-term debt for the firm under review or generally in the country under review. However, Rotem had no fixed-rate long-term debt during the years in which it received ECIL grants. Moreover, in Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review, 61 FR 28842 (June 6, 1996) (1992/93 Final Results), the Department determined that no long-term loans with fixed interest rates (or other long-term debt) were available in Israel during that period; the only long-term loans (or other long-term debt) available to companies in Israel were provided at variable interest rates. Consistent with the 1992/93 Final Results, we have used as the discount rate the yield (in real terms) on consumer price indexed (CPI) commercial bonds, plus the CPI (as published in the Bank of Israel Annual Reports). 61 FR 28842; See also Industrial Phosphoric Acid From Israel: Preliminary Results of Countervailing Duty Administrative Review, 61 FR 8255, 8257 (March 4, 1996). We are utilizing a calculation methodology that conforms with the use of variable rather than fixed interest rates in the years these grants were disbursed. This methodology reflects the actual long-term options open to Israeli firms.

To calculate the benefit to Rotem under this program, we have modified the grant methodology in this review to conform with our grant methodology developed in the countervailing duty investigation of steel wire rod from Venezuela. See Preliminary Affirmative Countervailing Duty Determination: Steel Wire Rod From Venezuela, 62 FR 41939, 41943 (August 4, 1997) (Wire Rod). In Wire Rod, we preliminarily determined that it is appropriate to inflation. Wire Rod, 62 FR at 41939. Making this adjustment is appropriate for high inflation economies because it maintains the allocated principal at a constant, inflation adjusted, value. It is also important to note that Israeli companies use inflation accounting in preparing their financial statements. Moreover, this reflects the adjustment recommended by respondents in their June 17, 1997, second supplemental questionnaire response, which is on file in the public file of the Central Records Unit of the Department of Commere, Room B–099. (The Department did not make an additional adjustment in these preliminary results recommended by respondents concerning the interest component of the benefit in these calculations.) In conformance with Wire Rod, we have adjusted the allocated principal of each ECIL grant for which benefits are still allocable to the POR.

An additional modification to these calculations is reflected in the *ad valorem* subsidy rate calculation. To calculate the *ad* valorem subsidy rate in the 1994 review, we allocated the 1994 benefits over either Rotem's total sales of IPA or total sales of all products. ECIL grants tied to production of IPA were allocated over sales of IPA, while grants tied to input products such as phosphate rock and green acid were allocated over Rotem's total sales of all products.

To calculate the total subsidy in this administrative review, we first summed the benefit to Rotem from all ECIL grant projects allocated to and received in 1995, after taking into account the 1992 and 1993 partial privatizations (and also accounting for the modification in the privatization calculation described above). Then, we determined the portion of that benefit still remaining with Rotem after accounting for the partial privatization of ICL in 1995. As with the 1994 review, ECIL grants tied to phosphate rock production were attributed to Rotem's total sales of all products. This is consistent with information reviewed at verification that phosphate rock produced from the company's three mines (Zin, Oron and Arad) could potentially be incorporated in all products produced by Rotem. Rotem officials explained that the decision to incorporate phosphate rock from a particular mine for production of specific downstream products is driven by economic considerations and because a different allocation may result in efficiency losses and increased costs. See the August 22, 1997, Memorandum to Barbara E. Tillman from The Team Re: Verification of Rotem's Questionnaire Responses in the 1995 Administrative Review of Industrial Phosphoric Acid from Israel at page 6 (public version on file in the public file

of the Central Records Unit, Room B–099 of the Department of Commerce) (Rotem VR).

However, based upon our finding at verification, we are now using a different denominator for grants tied to Rotem's green acid and IPA production. Rotem officials stated at verification that the green acid produced at plant 30 and 31 could potentially be incorporated into the production of all of the company's end-products. However, officials stressed that for the same reason that phosphate rock is allocated to specific products, green acid from plants 30 and 31 is also allocated to specific products for economic reasons. See Rotem VR at 6–7. We also learned that IPA or white acid can be and is incorporated into MKP, an expensive fertilizer. See Rotem VR at 7. Therefore, we preliminarily determine that it is appropriate to attribute ECIL grants tied to a particular unit over the sales of the product produced by that unit plus the sales of all products into which that product may be incorporated. Accordingly, we attributed ECIL grants tied to Rotem's green acid facilities to total sales minus direct sales of phosphate rock, and grants tied to Rotem's IPA facility were attributed to total sales of IPA and MKP. We summed the rates obtained on this basis, and preliminarily determine the net subsidy from this program to be 12.69 percent *ad valorem* for the POR.

*(B) Long-Term Industrial Development Loans*

Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the GOI. During the original investigation, we verified that these loans were project-specific. They were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks which no longer exist.

The long-term industrial development loans were provided to a diverse number of industries, including agricultural, chemical, mining, machine, and others. However, the interest rates on loans vary depending on the Development Zone in which the borrower is located. The interest rates on loans to borrowers in Development Zone A are lowest, while those on loans to borrowers in the Central Zone are highest. Therefore, loans to companies in Zone A are provided on preferential terms relative to loans received by companies in the heavily populated and developed Central Zone. In IPA Investigation, the Department found long-term industrial development loans to be regional subsidies and countervailable to the extent that they are provided at interest rates which are lower than those applied on loans provided to companies located in the Central Zone. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of this determination. Rotem had loans outstanding under this program during the review period. The loans carry the Zone A interest rates because of Rotem's location. Therefore, we determine that Rotem received countervailable benefits under this program because the interest rates paid by Rotem are lower than those which would apply in the Central Zone.

As was determined in the Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from Israel, 60 FR 10569 (February 27, 1995), under the terms of this program, the interest rates on these loans have two components—a fixed real interest rate and a variable interest rate, the latter of which is based on either the CPI or the dollar/shekel exchange rate. All of Rotem's loans were linked to the dollar/shekel exchange rate. Because the dollar-shekel exchange rate varies from year-to-year, we were unable to apply the Department's long-term loan methodology because we cannot calculate *a priori* the payments due over the life of these loans, and hence cannot calculate the ''grant equivalent'' of the loans. Therefore, in accordance with past practice, we have compared the interest that would have been paid by a company in the Central Zone, as a benchmark, to the amount actually paid by Rotem during the review period. See 1992/93 Final Results, 61 FR 28842. We thus calculated the benefit during the period of review. We summed the benefits for all loans and divided the total by Rotem's total sales during the review period. On this basis, we preliminarily determine the net subsidy from this program to be less than 0.005 percent *ad valorem* for the POR.

*(C) Encouragement of Industrial Research and Development Grants (EIRD)*

Rotem received several grants under this program during the review period. In the IPA Investigation, we determined that these grants are countervailable. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of this determination. We followed the methodology developed in the IPA Investigation to determine the benefit to Rotem from the EIRD program in 1995.

During the 1995 review period, Rotem received payments under six separate EIRD grants. At verification, we found that two of these grants, one tied to fertilizer production (File No. 18142) and the other to rubber products (File No. 17772), could not benefit the subject merchandise. However, the other grants were for research into either green acid or phosphate rock production. See Rotem VR at 13–16. We view these grants as ''non-recurring'' grants based on the analysis set forth in the ''Allocation'' section of the *GIA* (58 FR at 37226) because these benefits are exceptional, and Rotem cannot expect to receive benefits on an ongoing basis from review period to review period. The total value of the grants received in 1995 was less than 0.50 percent of all Rotem's sales. Therefore, we divided the benefit by Rotem's total sales if the grant was tied to phosphate rock production or by sales of fertilizers, MKP and IPA, if the grant was tied to production of green acid. This conforms with the methodology described above under the ECIL program. On this basis, we preliminarily determine the benefit from this program to be 0.08 percent *ad valorem*.

**II. Programs Preliminarily Determined To Be Not Used**

We examined the following programs and preliminarily determine that the producer and/or exporter of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

A. Reduced Tax Rates under ECIL;
B. ECIL Section 24 loans;
C. Dividends and Interest Tax Benefits under Section 46 of the ECIL; and
D. ECIL Preferential Accelerated Depreciation.
E. Exchange Rate Risk Insurance Scheme

**Preliminary Results of Review**

In accordance with 19 C.F.R. 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1995 through December 31, 1995, we preliminarily determine the net subsidy for Rotem to be 12.77 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (''Customs'') to assess countervailing duties as indicated above.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated above of the f.o.b.

invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 C.F.R. § 355.22(a). Pursuant to 19 C.F.R. 355.22(g), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 C.F.R. 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 C.F.R. 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. See 1992/93 Final Results, 61 FR 28842. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1995 through December 31, 1995, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

## Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 C.F.R. 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 C.F.R. 355.38, are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: September 2, 1997.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 97–23999 Filed 9–9–97; 8:45 am]

BILLING CODE 3510–DS–P

---

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–351–062]**

## Pig Iron From Brazil; Determination To Revoke Countervailing Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of determination to revoke countervailing duty order.

**SUMMARY:** The Department of Commerce (the Department) is revoking the countervailing duty order on pig iron from Brazil because it is no longer of interest to interested parties.

**EFFECTIVE DATE:** September 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Russell Morris or Maria MacKay, 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.

*Applicable Statute:* Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the ''Act''). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 355 (1996).

**SUPPLEMENTARY INFORMATION:**

## Background

On April 1, 1997, the Department published in the **Federal Register** (62 FR 15463) its intent to revoke the countervailing duty order on pig iron from Brazil ( 45 FR 23045; April 4, 1980). Additionally, as required by 19 CFR 355.25(d)(4)(ii), the Department served, by certified mail, written notice of its intent to revoke this countervailing duty order on each party listed on its most current service list.

## Scope of the Order

The merchandise covered by this order is pig iron of basic, foundry, malleable, and low phosphorous grades from Brazil. Such merchandise is currently classified under item numbers 7201.10.00, 7201.30.00, and 7206.10.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

## Determination To Revoke

The Department may revoke a countervailing duty order if it concludes that the order is no longer of interest to interested parties. We conclude that there is no interest in a countervailing duty order when no interested party (as defined in sections 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations) has requested an administrative review for at least five consecutive review periods and when no domestic interested party objects to the revocation (19 CFR 355.25(d)(4)(iii)).

We received no requests for administrative review for five consecutive review periods and no objections to our notice of intent to revoke the countervailing duty order. Therefore, we have concluded that the countervailing duty order covering pig iron from Brazil is no longer of interest to interested parties, and we are revoking this countervailing duty order in accordance with 19 CFR 355.25(d)(4)(iii).

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation on the subject merchandise as of the effective date of this notice, and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Brazil on or after January 1, 1997.

Dated: September 3, 1997.

**Jeffrey P. Bialos,**

*Principal Deputy Assistant Secretary for Import Administration.*

[FR Doc. 97–23998 Filed 9–9–97; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 082097A]**

### Marine Mammals; Scientific Research Permit No. 801–1365

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Dr. William A. Kuperman (Principal Investigator), Dr. Gerald L. D'Spain and Mr. Aaron Thode (Co-investigators), Marine Physical Laboratory, Scripps Institution of Oceanography, 291 Rosecrans Street, San Diego, California 92106, has been issued a permit to take marine species for purposes of scientific research during acoustic experiments.

**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); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (Tel: 310–980–4001).

**SUPPLEMENTARY INFORMATION:** On June 30, 1997, notice was published in the **Federal Register** (62 FR 35156) that a request for a scientific research permit to take various species of marine mammals and marine turtles had been submitted by the above-named individuals. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 4, 1997.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–23942 Filed 9-9-97; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### Technology Administration

### Technical Advisory Committee To Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure

**AGENCY:** Technology Administration, Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Technical Advisory Committee to Develop a Federal Information Processing Standard for the federal Key Management Infrastructure will hold a meeting on October 15–16, 1997. The Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure was established by the Secretary of Commerce to provide industry advice to the Department on encryption key recovery for use by federal government agencies. All sessions will be open to the public.

**DATES:** The meeting will be held on October 15–16, 1997 from 9:00 a.m. to 6:00 p.m.

**ADDRESSES:** The meeting will take place at the Orlando Marriott, 8001 International Drive Orlando, FL 32819.

**FOR FURTHER INFORMATION CONTACT:** Edward Roback, Committee Secretary and Designated Federal Official, Computer Security Division, National Institute of Standards and Technology, Building 820 Room 426, Gaithersburg, Maryland, 20899; telephone 301–975–3696. Please do not call the conference facility regarding details of this meeting.

**SUPPLEMENTARY INFORMATION:**

1. Agenda

Opening Remarks
Chairperson's Remarks
News Updates (Members, Federal Liaisons, Secretariat)
Working Group (WG) Reports
Discussion
Intellectual Property Issues (as necessary)
Public Participation
Plans for Next Meeting
Closing Remarks

Note that the items in this agenda are tentative and subject to change due to logistics and speaker availability.

2. Public Participation: The Committee meeting will include a period of time, not to exceed thirty minutes, for oral comments from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the individual identified in the ''for further information'' section. In addition, written comments should be directed to the Technical Advisory Committee to Develop a Federal Information Processing Standard for the Federal Key Management Infrastructure, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, Maryland 20899. It would be appreciated if sixty copies could be submitted for distribution to the Committee and other meeting attendees.

3. Additional information regarding the Committee is available at its world wide web homepage at: http://csrc.nist.gov/tacdfipsfkmi/

4. Should this meeting be canceled, a notice to that effect will be published in the **Federal Register** and a similar notice placed on the Committee's electronic homepage.

Dated: September 5, 1997.

**Mark Bohannon,**

*Chief Counsel for Technology Administration.*

[FR Doc. 97–23980 Filed 9–9–97; 8:45 am]

BILLING CODE 3510–CN–M

## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 18 September 1997 at 10:00 AM in the Commission's offices at the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C. 29 August 1997.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 97–23865 Filed 9–9–97; 8:45 am]

BILLING CODE 6330–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of submission of information collection #3038–0023—regulations and forms relating to registration with the Commission.

**SUMMARY:** The Commodity Futures Trading Commission has submitted information collection 3038–0023—Regulations and Forms Relating to Registration with the Commission to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The Commodity Exchange Act, as amended, requires the registration of all futures commission merchants, floor traders, floor brokers, associated persons, commodity trading advisors, commodity pool operators, introducing brokers, and leverage transaction merchants.

**DATES:** Comments must be received on or before October 10, 1997.

**ADDRESSES:** Persons wishing to comment on this information collection should contact the Desk Officer, CFTC, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the submission are available from the Agency Clearance Officer, (202) 418–5160.

*Title:* Regulations and Forms Relating to Registration with the Commission.

*Control Number:* 3038–0023.

*Action:* Extension.

*Respondents:* Commission Registrants.

*Estimated Annual Burden:* 27,467 hours.

Issued in Washington, D.C. on September 2, 1997.

**Jean A. Webb,**

*Secretary to the Commission.*

[FR Doc. 97–23884 Filed 9–9–97; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

**DATES:** 16 September 1997 (800 a.m. to 1600 p.m.).

**ADDRESSES:** The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

**FOR FURTHER INFORMATION CONTACT:** Maj Michael W. Lamb, USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: September 2, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–23961 Filed 9–9–97; 8:45 am]

BILLING CODE 5000–04–M

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the following Defense Nuclear Facilities Safety Board (Board) meeting described below.

**''Federal Register''** *Citation of Previous Announcement:* Previously announced in the August 26, 1997 **Federal Register** (62 FR 45237).

*Previously Announced Time and Date of the Meeting:* 9:00 a.m., September 16, 1997.

*Change in the Meeting:* The meeting has been postponed until 9:00 a.m. on October 23, 1997.

**CONTACT PERSON FOR MORE INFORMATION:** Richard A. Azzaro, Acting General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers under the Atomic Energy Act of 1954, as amended.

Dated: September 8, 1997.

**John T. Conway,**

*Chairman.*

[FR Doc. 97–24171 Filed 9–8–97; 3:30 pm]

BILLING CODE 3670–01–M

## DEPARTMENT OF ENERGY

### Beryllium Rule Advisory Committee

**AGENCY:** Office of Environment, Safety and Health, Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting.

**NAME:** Beryllium Rule Advisory Committee.

**DATES AND TIMES:** Monday, October 27, 1997 through Thursday, October 30, 1997, 9:00 a.m.–5:00 p.m.

**PLACE:** Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202, (703) 413–5500.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Safety and Health, EH–51, 270CC, 19901 Germantown Road, Germantown, MD 20874–1290, (301) 903–5684.

The Internet address is: jackie.rogers@eh.doe.gov.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Committee.* The Purpose of the Committee is to provide the Secretary of Energy with advice, information, and recommendations on the development of a proposed rulemaking for beryllium. The Committee will provide an organized forum for a diverse set of

interested stakeholders and technically adept individuals to conduct an in-depth assessment of beryllium-related issues.

**Tentative Agenda ***

*October 27–30, 1997*

8:00 a.m. Registration

9:00 a.m. Committee Chair Opens Public Meeting

9:05 a.m. Presentations and Discussions

9:30 a.m. Facilitated Meeting

12:00 p.m. Lunch

1:30 p.m. Facilitated Meeting

4:30 p.m. Statements from the Public

5:00 p.m. Meeting Adjourns

A final agenda will be available at the meeting.

*** Note:** It is anticipated that Breakout Sessions may occur during the conduct of this Public Meeting. Members of the public are invited to attend those Breakout Sessions.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Jacqueline Rogers at the mailing address, telephone number or internet address listed above. Individuals may also register to speak on October 27, 1997 to October 30, 1997 at the meeting site. Every effort will be made to hear all those wishing to speak to the Committee, on a first come, first serve basis. Those who call in will be given the opportunity to speak first. Depending upon the number of individuals wishing to speak, the Committee Chair will determine the length of time for the presentations at each meeting. The Committee Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Meeting Minutes:* A meeting transcript and minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 2, 1997.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–23969 Filed 9–9–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, Texas

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

**DATE AND TIME:** Tuesday, September 23, 1997: 1:30 p.m.—5:30 p.m.

**ADDRESSES:** Amarillo Association of Realtors 5601 Enterprise Circle Amarillo, Texas.

**FOR FURTHER INFORMATION CONTACT:** Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806)477–3121.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Committee:* The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

**Tentative Agenda**

1:30 p.m. Welcome—Agenda Review—Approval of Minutes
1:40 p.m. Co-Chair Comments
1:50 p.m. Task Force Reports
2:00 p.m. Subcommittee Reports
2:10 p.m. Ex-Officio Reports
4:00 p.m. Water Discussions—parts per million/parts per trillion
5:00 p.m. Updates—Occurrence Reports—DOE
5:30 p.m. Closing Remarks/Adjourn

*Public Participation:* The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on September 4, 1997.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–23970 Filed 9–9–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

**DATES:** Wednesday, September 17, 1997: 6:00 p.m.–9:00 p.m. (Mountain Daylight Time).

**ADDRESSES:** Los Griegos Family and Community Center, 1231 Candelaria NW., Albuquerque, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

6:00 p.m. Call to Order/Public Comments
6:12 p.m. Approval of Agenda; Approval of 8/20/97 Minutes
6:22 p.m. Chair's Report—Jesse D. Dompreh
6:32 p.m. Staff Report
6:37 p.m. Vote on Bylaws Amendment to Article VI
6:52 p.m. Vote on Acclamation for Officers
7:02 p.m. Break 7:12 p.m. Issues Committee: Accelerating Cleanup: Focus on 2006
7:27 p.m. Use of National Dialogue Funds—Presentation/Vote
7:47 p.m. Northern New Mexico Citizens' Advisory Board Discussion
7:57 p.m. Environmental Management Integration Recommendations
8:17 p.m. New/Other Business
8:32 p.m. Public Comment Period
8:42 p.m. Agenda Items for 9/23/97 Executive Committee Meeting
8:47 p.m. Agenda Items for 10/15/97 Meeting
8:52 p.m. Announcement of Next Meeting/Adjourn

A final agenda will be available at the meeting Wednesday, September 17, 1997.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on September 4, 1997.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–23971 Filed 9–9–97; 8:45 am]

BILLING CODE 6450–01–P

---

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Fernald

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald.

**DATES:** Saturday, September 20, 1997, 9:30 a.m.—12:30 p.m.; (public comment session: 10:30 a.m.—10:40 a.m.).

**ADDRESSES:** Jamtek Building, 10845 Hamilton-Cleves Highway, Harrison, Ohio.

**FOR FURTHER INFORMATION CONTACT:** John S. Applegate, Chair of the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061, or call the Fernald Citizens Task Force office (513) 648–6478.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the Fernald site.

**Tentative Agenda**

9:30 a.m. Call to Order
10:00–10:10 Chair's Remarks and New Business
10:10–10:30 Committee Reports
10:30–10:40 Opportunity for Public Comment
10:40–12:30 Roundtable Discussion on Citizens Advisory Board Membership and Organization
12:30 p.m. Adjourn

A final agenda will be available at the meeting, Saturday, September 20, 1997.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to John S. Applegate, Chair, the Fernald Citizens Task Force, P.O. Box 544, Ross, Ohio 45061 or by calling the Task Force message line at (513) 648–6478.

Issued at Washington, DC on September 4, 1997.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–23972 Filed 9–9–97; 8:45 am]

BILLING CODE 6450–01–P

---

## DEPARTMENT OF ENERGY

### Hydrogen Technical Advisory Panel

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting: Hydrogen Technical Advisory Panel.

**DATES:** Tuesday, September 16, 1997, 9:00 A.M.–4:30 P.M., Wednesday, September 17, 1997, 9:00 A.M.–3:30 P.M.

**ADDRESSES:** Harvey's Hotel Lake Tahoe, Highway 50 at Stateline Ave., Stateline, Nevada, Telephone: 800–427–8397.

**FOR FURTHER INFORMATION CONTACT:** Russell Eaton, Designated Federal Official, Department of Energy, Golden Field Office, 1617 Cole Blvd, Golden, CO 80401, Telephone: 303–275–4740.

**SUPPLEMENTARY INFORMATION:** Purpose of the Panel: The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law No. 101–566 and the Hydrogen Future Act of 1996, Public Law No. 104–271. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The

implementation and conduct of programs required by the Act, and (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems.

**Tentative Schedule**

*Tuesday, September 16, 1997*

9:00 AM Introduction and Opening Comments—A. Lloyd
9:15 DOE Opening Comments—A. Hoffman
9:45 DOE Federal Report—R. Eaton
10:00 DOE Hydrogen Program—S. Gronich
10:30 BREAK
10:45 DOE Transportation Fuel Cells—P. Patil
11:00 Hydrogen Program Budget—S. Gronich
12:00 PM LUNCH
1:30 Strategic Directions Draft Plan—Bailey/Kamal/Zalosh
2:30 Electric Power Research Institute, Residential Fuel Cell Program—J. O'Sullivan
3:00 BREAK
3:15 California Hydrogen Business Council—D. Moard
3:30 Public Comments—Audience
4:00 HTAP Panel Comments—Panel
4:30 ADJOURN
6:00 Reception

*Wednesday, September 17, 1997*

9:00 AM Carbon Sequestration—T. Chargin
9:30 President's Committee of Advisors on Science and Technology H.—Harvey
9:45 Hydrogen 2000—W. Hoagland
10:30 ENRON Renewable Energies Program—R. Kelley
12:00 PM LUNCH
1:30 Hydrogen Demonstration—P. Kruger
2:00 Nevada Test Site Development—E. Hodge
2:30 Hydrogen CD ROM—J. Hurwitch
2:45 Public Comments
3:15 HTAP Panel Discussion and Roundup—Panel
3:30 ADJOURN

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Russell Eaton's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meetings due to programmatic issues that needed to be resolved.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 A.M. and 4 P.M., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Russell Eaton,Department of Energy, Golden Field Office, 1617 Cole Blvd.,Golden, CO 80401, or by calling (303) 275–4740.

Issued at Washington, DC on September 5, 1997.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 97–23968 Filed 9–9–97; 8:45 am]

BILLING CODE 6450–01–P

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. TM98–1–20–000; TM98–1–48–000; TM98–1–91–000; TM98–2–91–000; TM98–1–112–000; TM98–1–67–000; TM98–2–32–000; TM98–1–21–000; TM98–1–70–000; TM98–1–22–000; TM98–1–2–000; TM98–1–130–000; TM98–1–110–000; TM98–1–11–000; TM98–1–5–000; TM98–1–16–000; TM98–1–26–000; TM98–1–59–000; TM98–1–28–000; TM98–1–8–000; TM98–1–7–000; TM98–1–111–000; TM98–2–111–000; TM98–1–69–000; TM98–1–9–000; TM98–1–17–000; TM98–1–142–000; TM98–1–68–000; TM98–1–29–000; TM98–1–42–000; TM98–1–30–000; TM98–1–126–000; TM98–1–121–000; TM98–1–49–000; TM98–1–76–000 (Not Consolidated)]**

## Algonquin Gas Transmission Company; ANR Pipeline Company; ANR Storage Company; ANR Storage Company; Blue Lake Gas Storage Company; Canyon Creek Compression Company; Colorado Interstate Gas Company; Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company; CNG Transmission Corporation; East Tennessee Natural GAs Company; Gas Transport, Inc.; Iroquois Transmission System L.P.; Koch Gateway Pipeline Company; Midwestern Gas Transmission Company; National Fuel Gas Supply Corporation; Natural Gas Pipeline Company of America; Northern Natural Gas Company; Panhandle Eastern Pipe Line Company; South Georgia Natural Gas Company; Southern Natural Gas Company; Steuben Gas Storage Company; Steuben Gas Storage Company; Stingray Pipeline Company; Tennessee Gas Pipeline Company; Texas Eastern Transmission Corporation; Texas-Ohio Pipeline, Inc.; Trailblazer Pipeline Company; Transcontinental Gas Pipe Line Corporation; Transwestern Pipeline Company; Trunkline Gas Company; Tuscarora Gas Transmission Company; WestGas InterState, Inc.; Williston Basin Interstate Pipeline Company; Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff**

September 4, 1997.

Take notice that on August 29, 1997, the applicants referenced above tendered for filing tariff sheets to comply with the Commission's directives in Order No. 472 and Order No. 472–B, to be effective October 1, 1997.

Each applicant states that the purpose of its filing is to implement the tracking of the ACA Unit Surcharge authorized by the Commission to be applied to rates for the fiscal year 1998 for recovery of the Annual Charge for fiscal year 1997. Each applicant states that the ACA Unit Surcharge authorized by the Commission for fiscal year 1998 is $0.0022 per Dth, which is an increase of $0.0002 per Dth over the previous surcharge.

Each applicant states that copies of this filing were served on all firm customers, interested state commissions and all current interruptible customers.

The above-referenced dockets are being noticed together due to the large number of filings received. The filings are not being consolidated. Any party wishing to file a motion to intervene or protest must file a separate motion for each docket.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23922 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–4273–000]**

### Cargill-IEC, L.L.C.; Notice of Filing

September 4, 1997.

Take notice that on August 19, 1997, Cargill-IEC, L.L.C. (Cargill-IEC), a joint venture between WPL Holdings Commodities Trading, L.L.C. (WHCT), a member of which is Heartland Energy Services, Inc. (HES), and Cargill, Incorporated (Cargill), filed for approval of its initial rate schedule to sell power at market-based rates and for certain waivers of the Commission's filing and reporting requirements. HES also filed a notification of change in status.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23934 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–4158–000]**

### Cleveland Electric Illuminating Company; Notice of Filing

September 4, 1997.

Take notice that on August 12, 1997, Cleveland Electric Illuminating Company, tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service. The following Agreements are between Centerior Service Company (as agent for the Companies) and American Electric Power, AES Power, Incorporated, Cinergy Services, Incorporated, Engage Energy, Incorporated, Norman Energy Services, and PacifiCorp Power Marketing, Incorporated. The Transmission Customers mentioned above have qualified as Eligible Customers by Centerior Energy for Non-Firm Transmission Service. The Companies request an effective date of July 1, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with 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 September 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23933 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–32–000]**

### Colorado Interstate Gas Company; Notice of Tariff Filing

September 4, 1997.

Take notice that on August 29, 1997, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 11A, reflecting a decrease in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 0.76% to 0.69%, reflecting an increase in the fuel retention percentage for Transportation Fuel Gas from 2.39% to 2.48%, and reflecting no change for Storage Fuel gas from 1.25% effective October 1, 1997.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23923 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–287–005]**

### El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet, to become effective September 1, 1997:

Seventh Revised Sheet No. 30

El Paso states that the above tariff sheet is being filed to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23916 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–33–000]**

### El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A and First Revised Volume No. 2, the following tariff sheets to become effective October 1, 1997:

*Second Revised Volume No. 1–A*

Tenth Revised Sheet No. 20
Eleventh Revised Sheet No. 23
Fourteenth Revised Sheet No. 24
Eleventh Revised Sheet No. 26
Tenth Revised Sheet Nos. 27 and 28
First Revised Sheet Nos. 37 and 38

*Third Revised Volume No. 2*

41st Revised Sheet No. 1–D.2
34th Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to reflect that the Annual Charge Adjustment to be collected for the fiscal year beginning October 1, 1997 is to be $0.0021 per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23924 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–51–000]**

### Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 7, proposed to be effective October 1, 1997.

Great Lakes states that the above-referenced tariff sheet is being filed to reflect the new ACA rate to be charged pursuant to the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued May 29, 1987. The new ACA rate to be charged by Great Lakes was established by FERC notice given on August 20, 1997 and is to be effective October 1, 1997. Great Lakes is also changing the above-referenced tariff sheet to reflect the correct effective date of the Gas Research Institute funding surcharges pursuant to the Commission's September 27, 1996 Order in Docket No. PR96–267–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23926 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–151–005]**

### Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing its become part of FERC Gas Tariff, Third Revised Volume No. 1, Third Substitute First Revised Sheet No. 87, with an effective date of June 1, 1997.

Mid Louisiana asserts that the purpose of this filing is to comply with the Commission's Letter Order, dated August 21, 1997 in Docket No. RP97–151–004, in which the Commission directed Mid Louisiana to refile the stated tariff sheet indicating corrected version numbers for GISB EDM standards incorporated by reference. The sheet is submitted with the effective date unchanged, June 1, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this compliance filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23914 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–1–001]**

### Midcoast Interstate Transmission, Inc.; Notice of ACA Filing

September 4, 1997.

Take notice that on August 29, 1997, Midcoast Interstate Transmission, Inc. (formerly Alabama-Tennessee Natural Gas Company) (Midcoast), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1997:

SUB 14th Revised Sheet No. 4

Midcoast states that the purpose of this filing is to revise the Annual Charge Adjustment (ACA) filing Midcoast made on August 12, 1997, in FERC Docket No. TM97–8–1–1–000, to reflect the Commission's corrected Annual Charge Unit Rate of $0.0022 per Dth. Midcoast states that it was notified of the change in the unit rate by the Commission's notice dated August 20, 1997. Midcoast further states that the instant filing reflects and increase of $0.0001 per Dth over that shown in 14th Revised Sheet No. 4, and an increase of $0.0002 over its previous effective ACA.

Midcoast requests any waiver that may be required in order to accept and approve this filing as submitted.

Midcoast states that copies of the tariff filing have been served upon the Company's affected customers and interested public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23919 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP91–78–006]**

### Midwestern Gas Transmission Company; Notice of Refund Report

September 4, 1997.

Take notice that on September 2, 1997, Midwestern Gas Transmission Company (Midwestern), filed its report of refunds reflecting refunds provided to its customers.

Midwestern states that the purpose of these refunds was to flow through to its customers refunds received from its former upstream supplier, Tennessee Gas Pipeline Company (Tennessee). On May 16, 1997, Midwestern states that it received from Tennessee a refund of amounts paid under its former Rate Schedule CD contracts with Tennessee. Tennessee effectuated the refund pursuant to Article VII of the Stipulation and Agreement filed on June 2, 1993, as approved by the Federal Energy Regulatory Commission's order issued on October 29, 1993, in Docket No. RP91–203 *et al.*

On August 4, 1997, Midwestern states that it disbursed refunds, with interest, to its customers entitled to a refund totaling $219,846 with detailed calculations supporting the refunded amount.

Midwestern states that a copy of this filing including Schedules 1, 2 and 3 has been mailed to each affected state regulatory commission and to Midwestern's customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before September 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23911 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–47–000]**

### MIGC, Inc.; Notice of Proposed Changes In FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, MIGC, Inc. (MIGC) tendered for filing to become part of FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 4. This tariff sheet is proposed to become effective October 1, 1997.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to transportation services during the fiscal year commencing October 1, 1997.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secrretary.*

[FR Doc. 97–23925 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–92–000]**

### Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, Mojave Pipeline Company (Mojave) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective October 1, 1997:

First Revised Sheet No. 11

Mojave states that it is tendering this tariff sheet to reflect that the Annual Charge Adjustment to be collected for the fiscal year beginning October 1, 1997 is to be $0.0021 per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commisson's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23929 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–200–025]**

### NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective September 1, 1997:

Fifth Revised Sheet No. 7E
Second Revised Sheet No. 7E.02
Second Revised Sheet No. 7E.03
Second Revised Sheet No. 7G.01
Second Revised Sheet No. 7H

NGT states that these tariff sheets are filed to reflect revisions to identified receipt points and corporate name changes of certain shippers with regard to negotiated rate transactions already on file with the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23912 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–315–004]**

### Northwest Pipeline Corporation; Notice of Compliance Filing

September 4, 1997.

Take notice that on August 29, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective September 1, 1997:

First Revised Sheet No. 232–H
First Revised Sheet No. 232–I
First Revised Sheet No. 232–J
Original Sheet No. 232–K

Northwest states that the purpose of this filing is to comply with the Commission's July 30, 1997 order in this proceeding, which requires Northwest to revise certain scheduling provisions proposed in conjunction with providing a pooling service.

Northwest states that a copy of this filing has been served upon Northwest's jurisdictional customers and upon interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23917 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–73–001]**

### Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, Ozark Gas Transmission System (Ozark) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following substitute revised tariff sheet, with a proposed effective date of October 1, 1997:

Substitute Sixteenth Revised Sheet No. 4

Ozark states that on August 20, 1997, it submitted for filing a tariff sheet intended to reflect an Annual Charge Adjustment (ACA) charge of $.0021/Dth. However, unbeknownst to Ozark, on August 20, 1997, the Commission issued a revised calculation of the ACA charge, resulting in an ACA charge of $.0022/Dth. Ozark states that this filing is intended to revise Ozark's August 20 filing to include the Commission's adjusted ACA charge.

Ozark states that it is amending its transmission rate schedules to reflect the Commission-proscribed ACA unit charge of $.0022 per Dekatherm. Ozark states that this is a $.0002 increase from the currently effective ACA unit charge. Ozark states that its filing is submitted pursuant to Section 154.402 of the Commission's Regulations and Section 11 of the General Terms and Conditions of Ozark's FERC Gas Tariff, First Revised Volume No. 1.

Ozark states that copies of this filing were served on Ozark's jurisdictional customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section

385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23927 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–86–000]**

### Pacific Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, Pacific Gas Transmission Company (PGT) tendered for filing for filing and acceptance Eighteenth Revised Sheet No. 4, Ninth Revised Sheet No. 4A, Fourth Revised Sheet No. 5A, and Eighth Revised Sheet No. 6C to be included in its FERC Gas Tariff, First Revised Volume No. 1–A and Fourteenth Revised Sheet No. 7 to be included in its FERC Gas Tariff, Second Revised Volume No. 1, to become effective October 1, 1997.

PGT asserts that the purpose of this filing is to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to PGT. PGT further states that a copy of this filing has been served upon all jurisdictional customers and upon interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23928 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–3929–000]**

### PPM Four LLC; Notice of Filing

September 4, 1997.

Take notice that on July 25, 1997, PM Four LLC tendered for filing FERC Rate Schedule No. 1 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 Street NE., Washington, DC 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 September 15, 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. 97–23931 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–6–000]**

### Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

September 4, 1997.

Take notice that on August 29, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheets, with an effective date of October 1, 1997:

Sixth Revised Sheet No. 7
First Revised Sheet No. 7a
Sixth Revised Sheet No. 8
Sixth Revised Sheet No. 9

Sea Robin states that the aforesaid tariff sheets implement the Commission's revised Annual Charge Adjustment (ACA) of .23¢ per Dth. This represents an increase of .03¢ per Dth in the ACA charge from the current level of .20¢ per Dth.

Sea Robin states that copies of Sea Robin's filing were served upon all of Sea Robin's customers, affected commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Section 385.214, 385.211). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23920 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP97–716–000]**

### Tennessee Gas Pipeline Company; Notice of Application

September 4, 1997.

Take notice that on August 27, 1997, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an abbreviated application in Docket No. CP97–716–000 pursuant to Section 7(b) of the Natural Gas Act, requesting authorization to remove and replace minor interconnect and header facilities in connection with Tennessee's proposed modification of its Lobelville Meter Station located in Lobelville, Perry County, Tennessee. Specifically, Tennessee seeks authorization to remove and replace (1) approximately 40 feet of 8-inch diameter pipe located between Valve 79B–101.1 and upstream meter header; and (2) two 12-inch measurement headers.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 25, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 and the Regulations under the Natural Gas Act (18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23909 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP96–308–003 and RP96–268–003]**

### Tennessee Gas Pipeline Company; Notice of Proposed Tariff Revisions To Reflect Cancellation of Third Party Provider Storage Swing Option Program

September 4, 1997.

Take notice that on August 29, 1997, Tennessee Gas Pipeline Company (Tennessee) tendered for filing proposed revised tariff sheets to be effective September 28, 1997, that reflect the cancellation of the third party provider (TPP) storage swing option (SSO) program set forth in Rate Schedule LMS–MA.

Tennessee states that copies of this filing have been mailed to each of the parties that have intervened in the referenced proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed on or before September 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23913 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–3587–000]**

### The Toledo Edison Company; Notice of Filing

September 4, 1997.

Take notice that on August 20, 1997, The Toledo Edison 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 Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 12, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23930 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER97–4045–000]**

### Toledo Edison Company; Notice of Filing

September 4, 1997.

Take notice that on August 1, 1997, the Toledo Edison Company tendered for filing its quarterly report of transactions for the period April 1, 1997 to June 30, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 17, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23932 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–168–004]**

### Tuscarora Gas Transmission Company; Notice of Compliance Filing

September 4, 1997.

Take notice that on September 2, 1997, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective November 1, 1997:

Second Revised Sheet No. 33
Second Revised Sheet No. 37
First Revised Sheet No. 37A

First Revised Sheet No. 37B
Second Revised Sheet No. 42
First Revised Sheet No. 42B
Second Revised Sheet No. 48

Tuscarora asserts that the purpose of this filing is to comply with the Commission's Letter Order Pursuant to Section 375.307 (b)(1) and (b)(3) OPR Division of Pipeline Rates West) and Order 587–C.

Tuscarora states that copies of this filing were mailed to all parties on the service list in this docket, all customers of Tuscarora and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23915 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–377–001]**

### Williston Basin Interstate Pipeline Company; Notice of Refund Report

September 4, 1997.

Take notice that on August 29, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing with the Commission, its Refund Report made in compliance with the Commission's Order issued June 26, 1997 in the above referenced docket.

Williston Basin states that on August 13, 1997, refunds were sent to the applicable Rate Schedule FT–1 shippers to reflect the final reconciliation of the Rate Schedule FT–1 Gas Supply Realignment (GSR) amortization account. Williston Basin also states that on this same date, an invoice was sent to the applicable Rate Schedule ST–1 shipper to reflect the final reconciliation of the Rate Schedule ST–1 GSR amortization account. The GSR refunds associated with Rate Schedule FT–1 included interest through August 13, 1997, and the final billing associated with Rate Schedule ST–1 included interest through August 25, 1997, in accordance with Section 154.501 of the Commission's Regulations.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 11, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23918 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM98–1–119–000]**

### Young Gas Storage Company, Ltd.; Notice of Filing

September 4, 1997.

Take notice that on August 29, 1997, Young Gas Storage Company, Ltd. (Young) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 4 and First Revised Sheet No. 5A. The tariff sheets reflect an increase in the ACA adjustment charge, resulting in a new ACA rate of $0.0020 per Dth based on Young's 1997 ACA billing. Young requests that the new $0.0020 cent per Dth ACA charge be effective October 1, 1997.

Young states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23921 Filed 9–9–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Amendment of Exemption

September 4, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Exemption.

b. *Project No:* 7254–001.

c. *Date Filed:* February 11, 1997.

d. *Applicant:* A&D Hydro, Inc.

e. *Name of Project:* West Dudley Project.

f. *Location:* Quinebaug River, Worcester County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., Section 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert King, P.E., President, A&D Hydro, Inc., 170 Barretts Mill Rd., Concord, MA 02174, (617) 648–0432.

i. *FERC Contact:* Anum Purchiaroni, (202) 219–3297.

j. *Comment Date:* October 10, 1997.

k. *Description of Project:* A&D Hydro, Inc., exemptee for the West Dudley Project, filed an application to correct the description of the project stated in the exemption. The Notice of Exemption issued on June 10, 1983, describes the project consisting of a dam with 13-feet-high gross head, including existing 2-foot-high flashboards, with a tailwater elevation of 364.5 feet, and impoundment surface elevation of 377.5 feet. The exemptee filed a 1993 survey and a 1997 exhibit drawing that indicates an error in the headpond elevation and flashboards height. These elevations correspond to 4-foot-high flashboards, and about 13 feet of head. The exemptee stated that the flashboard height has not changed since the project was exempted from licensing in 1983.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and

Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–23910 Filed 9–9–97; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30415A; FRL–5726–7]**

## Dekalb Genetics Corporation; Approval of a Pesticide Product Conditional Registration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application to conditionally register the product DEKALBt, containing a plant pesticide active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Michael Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North Tower, CS #1, Environmental Protection Agency, 2800 Crystal Drive, Arlington, VA 22202, 703–308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of July 31, 1996 (61 FR 39959; FRL–5379–9), which announced that Dekalb Genetics Corporation, 3100 Sycamore Road, DeKalb, IL 60115-9600, had submitted an application to register the product Corn Borer-Resistant Corn Containing Insecticidal Bt Protein II (EPA File Symbol 69575–E), containing the plant pesticide active ingredient *Bacillus thuringiensis* subspecies *kurstaki* CryIA(c) delta-endotoxin and the genetic material necessary for its production in corn at 100 percent, an active ingredient not included in any previously registered product.

The application was approved on March 25, 1997, as DEKALBt (formerly Corn Borer-Resistant Corn Containing Insecticidal Bt Protein II); the corn seed containing this plant pesticide is for use on field corn only (EPA Registration Number 69575–2). The chemical was amended to read ''*Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production in corn.''

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production in corn, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production in corn during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

This product is conditionally registered in accordance with FIFRA section 3(c)(7)(C). Dekalb must submit all data required for registration for this product. If the conditions are not complied with the registration will be subject to cancellation in accordance with FIFRA section 6(e). This registration will automatically expire on April 1, 2001.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in an EPA Pesticide Fact Sheet on *Bacillus thuringiensis* CryIA(c) delta-endotoxin and the genetic material necessary for its production in corn.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed

to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

### List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 26, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 97–23687 Filed 9–9–97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30439; FRL–5740–5]**

## Certain Companies; Applications to Register Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register a pesticide product containing a new active ingredient not included in any previously registered product and a product involving a change use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments must be submitted by October 10, 1997.

**ADDRESSES:** By mail, submit written comments identified by the document control number [OPP–30439] and the file symbols to: Public Information and Records Integrity Branch (7506C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Action Leader listed in the table below:

| Regulatory Action Leader | Office location/telephone number | Address |
|---|---|---|
| Michael Mendelsohn ..... | 5th floor, CS #1, 703–308–8715, e-mail: mendelsohn.mike@epamail.epa.gov. | 2800 Crystal Drive, Arlington, VA |
| Sheila Moats, ..... | Rm. 5-W39, CS #1, 703–308–1259, e-mail: moats.sheila@epamail.epa.gov. | -Do- |

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register a pesticide product containing an active ingredient not included in any previously registered product and a product involving a change use pattern pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

### I. Product Containing a New Active Ingredient Not Previously Registered

File Symbol: 70759–R. Applicant: EM Industries Inc./Rona, 7 Skyline Drive, Hawthorne, NY 10532. Product Name: Insect Repellent 3535. Biochemical. Active ingredient: 3-[*N*-Butyl-*N*-acetyl]-aminopropionic acid, ethyl ester at 98 percent. Proposed classification/Use: None. For use only in the formulation of insect repellent products against mosquitoes, deer ticks, body lice, and biting flies. (Sheila Moats)

### II. Product Involving a Change Use Pattern

File Symbol: 65268–R. Applicant: Rogers Seed Company, 600 N. Armstrong Place, Boise, ID 83704. Product Name: Attribute Insect Protected Sweet Corn. Active ingredient: *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material (plasmid vector pZO1502) necessary for its production in corn at 0.0002-0.0006 percent. Proposed classification/Use: None. To include in its presently registered field corn use, a new use of the *Bt* protein plant pesticide active ingredient for the control of the European Corn Borer and Corn Earworm in sweet corn. (Mike Mendelsohn)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30439] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30439]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Written comments filed pursuant to this notice, will be available in the

Public Information and Records Integrity Branch, Information Resources and Services Division at the address provided, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays. It is suggested that persons interested in reviewing the application file, telephone this office at (703-305-5805) to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

### List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: August 26, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 97–23685 Filed 9–9–97; 8:45 am]

BILLING CODE 6560–50–F

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30394A; FRL–5726–6]**

## Monsanto Company; Approval of a Pesticide Product Conditional Registration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application submitted by Monsanto Company to conditionally register the product YieldGard for a changed use pattern pursuant to the provisions of section 3(c)(7)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Michael Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North Tower, CS #1, Environmental Protection Agency, 2800 Crystal Drive, Arlington, VA 22202, 703–308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of November 1, 1995 (60 FR 55574; FRL–4979–7), which announced that Monsanto Company 700 Chesterfield Parkway North St. Louis, MO 63198, had submitted an application to register the product *Bacillus thuringiensis* subsp. *kurstaki* (B.t.k.) Insect Control Protein (EPA File Symbol 524–UIO).

The product was announced as containing the plant pesticide active ingredient *Bacillus thuringiensis* subsp. *kurstaki* delta-endotoxin as produced in corn by a cryIA(b) gene and its controlling sequences, an active ingredient not included in any previously registered product. Subsequent to this, the Agency approved a seed increase registration for this active ingredient on May 28, 1996, under EPA Registration No. 524–492.

The full commercial use application from Monsanto was approved on December 20, 1996, as YieldGard (formerly *Bacillus thuringiensis* subsp. *kurstaki* (B.t.k.) Insect Control Protein) for use on field corn (EPA Registration Number 524–489), the chemical was amended to read ''*Bacillus thuringiensis* CryIA(b) delta endotoxin and the genetic material necessary for its production in corn at 0.023-0.029 percent.''

This registration was conditionally granted to allow additional use of the active ingredient for food and feed in field corn in accordance with FIFRA section 3(c)(7)(B). This use is conditional upon data development in the area resistance management research and *Collembola* and *Daphnia magna* toxicity testing and limited by resistance management and expiration provisions of the registration.

A conditional registration may be granted under section 3(c)(7)(B) of FIFRA for a product involving a changed use pattern where certain data are lacking, on condition that such data are received as specified by EPA and the applicant has submitted satisfactory data pertaining to the proposed additional use and the amended registration would not significantly increase the risk of any unreasonable adverse effect.

The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* CryIA(b) delta endotoxin and the genetic material necessary for its production in corn, and information on social, economic, and environmental benefits to be derived from such use. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus thuringiensis* CryIA(b) delta endotoxin and the genetic material necessary for its production in corn consistent with the terms and conditions of registration during the period of conditional registration will not cause any unreasonable adverse effect on the environment.

This product is conditionally registered in accordance with FIFRA section 3(c)(7)(B). This registration will automatically expire on midnight April 1, 2001. EPA will reevaluate the effectiveness of Monsanto's resistance management plan before April 1, 2001, and decide whether to convert the registrations to a non-expiring registrations. If the conditions are not complied with the registration will be subject to cancellation in accordance with FIFRA section 6(e).

More detailed information on this conditional registration is contained in an EPA Pesticide Fact Sheet on Monsanto's *Bacillus thuringiensis* CryIA(b) delta-endotoxin and the genetic material necessary for its production in corn.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

### List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 26, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 97–23686 Filed 9–9–97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30394B; FRL–5740–4]**

## Novartis Seeds; Approval of a Pesticide Product Conditional Registration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application to conditionally register the product Northrup King Insect Resistant Corn containing a new plant pesticide active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended and the subsequent amendment of this product for a changed use pattern pursuant to section 3(c)(7)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Michael Mendelsohn, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North Tower, CS #1, Environmental Protection Agency, 2800 Crystal Drive, Arlington, VA 22202, 703–308–8715; e-mail: mendelsohn.mike@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the Environmental Sub-Set entry for this document under ''Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of November 1, 1995 (60 FR 55574; FRL–4979–7), which announced that Northrup King Company, 7500 Olson Memorial Highway, Golden Valley, MN 55427, submitted an application to register the transgenic plant pesticide product Northrup King Insect Resistant Corn (EPA File Symbol 67979–R). The Northrup King Co., has changed and is now known as Novartis Seeds, P.O. Box 12257, Research Triangle Park, NC 27709–2257. This product contained the plant pesticide active ingredient *Bacillus thuringiensis* subsp. *kurstaki* delta-endotoxin as produced in corn by a CryIA(b) gene and its controlling sequences, an active ingredient not included in any previously registered product.

The application from Northrup King (now known as Novartis Seeds) was approved on May 14, 1996, as Northrup King Insect Resistant Corn for seed propagation only (EPA Registration Number 67979–1) the chemical was amended to read ''*Bacillus thuringiensis* delta endotoxin as produced by a CryIA(b) gene and its controlling sequences as found on plasmid vector pZO1502 at 0.00475-0.0006 percent.''

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for new active ingredients where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* delta endotoxin as produced by a CryIA(b) gene and its controlling sequences as found on plasmid vector pZO1502, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus thuringiensis* delta endotoxin as produced by a CryIA(b) gene and its controlling sequences as found on plasmid vector pZO1502 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

This product was conditionally registered in accordance with FIFRA section 3(c)(7)(C). The registration was originally to expire in May 1997. However, as outlined further in this document, this product was amended pursuant to section 3(c)(7)(B) of FIFRA to allow commercial use and thus, the expiration date was extended to April 1, 2001. EPA will reevaluate the effectiveness of Novartis Seeds resistance management plan before April 1, 2001, and decide whether to convert the registration to a non-expiring registration. If the conditions are not complied with the registration will be subject to cancellation in accordance with FIFRA section 6(e).

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration was in the public interest. Use of the pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

The product was amended on August 5, 1996 to include in the already registered uses a new use for commercial use in field corn.

This registration was conditionally amended to allow additional use of the active ingredient for food and feed in field corn in accordance with FIFRA section 3(c)(7)(B). This use is conditional upon data development in the area resistance management research and *Collembola* and *Daphnia magna* toxicity testing and limited by resistance management and expiration provisions of the registration.

A conditional registration may be granted under section 3(c)(7)(B) of FIFRA for a product involving a changed use pattern where data are lacking, on condition that such data are received as specified by EPA and the applicant has submitted satsifactory data pertaining to the proposed additional use and the amended registration would not significantly increase the risk of any unreasonable adverse effect.

More detailed information on this conditional registration is contained in an EPA Pesticide Fact Sheet on *Bacillus thuringiensis* delta endotoxin as produced by a CryIA(b) gene and its controlling sequences as found on plasmid vector pZO1502.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services

Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

### List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 26, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 97–23688 Filed 9–9–97; 8:45 am]

BILLING CODE 6560–50–F

---

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30425A; FRL–5742–6]**

## Toagosei Company Ltd.; Approval of a Pesticide Product Registration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application to register the pesticide product Kaligreen, involving a changed use pattern of the active ingredient pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Denise Greenway, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. CS51B6, Westfield Building North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**: Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under ''Rules and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of December 11, 1996 (61 FR 65220; FRL–5574–6), which announced that Toagosei Co., Ltd. of Japan, represented by Nichimen America, Inc., 1345 Avenue of the Americas, New York, NY 10105, had submitted an application to register the pesticide product Kaligreen, a fungicide (EPA File Symbol 70231–R), containing the active ingredient potassium bicarbonate at 82 percent, an active ingredient which involves a changed use pattern.

The application was approved on July 31, 1997, as Kaligreen to add to the active ingredients presently registered manufacturing use, a new end use to control powdery mildew on grapes, cucumbers, strawberries, tobacco, and roses (EPA Registration Number 70231–1).

The Agency has considered all required data on risks associated with the proposed use of potassium bicarbonate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of potassium bicarbonate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on potassium bicarbonate.

A copy of this fact sheet, which provides a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703-305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

**Authority:** 7 U.S.C. 136.

### List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 27, 1997.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 97–23973 Filed 9-9-97; 8:45 am]

BILLING CODE 6560–50–F

---

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5891–1]**

## Notice of Proposed CERCLA Section 122(h)(1) Administrative Cost Recovery Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposal of CERCLA section 122(h)(1) administrative cost recovery settlement for the Automatic Die Casting Site.

**SUMMARY:** U.S. EPA proposes to address the potential liability of Rauckis Investment Company and Construction Management, Inc. (''Settling Parties'') under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.*, for past costs incurred in response to the release or threatened release of hazardous substances at or from the Automatic Die Casting Site (''the Site'') located in St. Clair Shores, Michigan. The U.S. EPA proposes to address the potential liability of the Settling Parties by execution of a CERCLA section 122(h)(1) Administrative Order on Consent (''AOC'') prepared pursuant to 42 U.S.C. 9622(h)(1). The key terms and conditions of the AOC may be briefly summarized as follows: (1) The Settling Parties agree to pay $65,000 to the Hazardous Substances Superfund; (2) The Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to past response costs or the AOC; and (3) U.S. EPA affords the Settling Parties a

covenant not to sue for recovery of past response costs pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), and contribution protection as provided by CERCLA sections 113(f)(2) and 122(h)(4), 42 U.S.C. 9613(f)(2) and 9622(h)(4), conditioned upon satisfactory completion of obligations under the AOC. The Site is not on the NPL, and no further response activities at the Site are anticipated at this time. The AOC was signed by the Director, Superfund Division, U.S. Environmental Protection Agency, Region V, on August 28, 1997.

**DATES:** Written comments on the proposed AOC must be received by U.S. EPA October 10, 1997.

**ADDRESSES:** The proposed settlement and the Agency's response to any comments received will be available for public inspection at U.S. EPA Records Center Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should reference the Automatic Die Casting Site, St. Clair Shores, Michigan, and EPA Docket No. V–W–97–C–428 and should be addressed to Mr. T. Leverett Nelson, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Mr. T. Leverett Nelson, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886–6666.

**William E. Muno,**

*Director, Superfund Division, U.S. Environmental Protection Agency, Region 5.*

[FR Doc. 97–23976 Filed 9–9–97; 8:45 am]

BILLING CODE 6560–50–M

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

**SUMMARY:** The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

**TIME AND PLACE:** Thursday, September 25, 1997, at 9:30 a.m. to 3:15 p.m. The meeting will be held at Export-Import Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

**AGENDA:** The meeting agenda will include a discussion of the following: Presentations of best practices by other export credit agencies followed by a round table discussion including responses from the senior staff at Export-Import Bank.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Nancy Suter, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3512, not later than September 15, 1997. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 15, 1997, Nancy Suter, Room 1215, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3955 or TDD: (202) 565–3377.

**FURTHER INFORMATION:** For further information, contact Nancy Suter, Room 1215, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3512.

**Fred H. Massey, Jr.,**

*Associate General Counsel.*

[FR Doc. 97–23888 Filed 9–9–97; 8:45 am]

BILLING CODE 6690–01–M

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 11, 1997, from 9:00 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

A. *Approval of Minutes*
B. *New Business*

*Regulations*

1. Leasing [12 CFR parts 614, 616, 618, and 621] (Proposed)
2. Cumulative Voting [12 CFR Part 615] (Final)

**Closed Session ***

C. *Report*
OSMO's Quarterly Report

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (9) and (10).

Dated: September 5, 1997.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 97–24108 Filed 9–8–97; 10:07 am]

BILLING CODE 6705–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 97–1870]**

### Workshops on Forward-Looking Cost Mechanisms for Universal Service Support for Non-Rural Carriers, September 3 and September 11, 1997

Released August 28, 1997.

[CC Docket Nos. 96–45 and 97–160]

In the Universal Service Order released May 8, 1997, the Commission, acting on the recommendation of the Federal-State Joint Board, concluded that universal service support for non-rural carriers should be determined by subtracting a benchmark revenue amount from the forward-looking economic cost of providing the supported services.[1] The Commission concluded that it should continue to review two cost models, the Hatfield Model and the Benchmark Cost Proxy Model (BCPM).[2] The Commission further concluded that it would select the platform design features[3] of a

[1] Federal-State Joint Board on Universal Service, CC Docket No. 96–45, *Report and Order,* FCC 97–157, (released May 8, 1997) 62 FR 32862 (June 17, 1997) (*Order*) at paras. 199–201.

[2] The proponents of the Hatfield Model are AT&T and MCI. The proponents of BCPM are US West, Sprint, and BellSouth. See Order at Appendix J for a description of the Hatfield Model and BCPM.

[3] In the context of a forward-looking economic cost mechanism, the ''platform'' refers to the fixed algorithms and assumptions built into a cost model, as contrasted with user-specified ''inputs'' into a

Continued

forward-looking economic cost mechanism by December 31, 1997, and select a complete mechanism, including input values, by August 1998.[4] In a *Further Notice of Proposed Rulemaking* (*FNPRM*) in this proceeding, the Commission stated that it would consider a hybrid mechanism, combining the best features of both models, and might also ''study alternative algorithms and approaches that could be submitted by parties other than model sponsors or that could be generated internally by Commission staff.''[5]

As part of the process of considering mechanisms for computing the forward-looking economic cost of providing the supported services, the Common Carrier Bureau will hold two public workshops to present platform components that are being developed by Commission staff. The Bureau is considering whether these platform components should be incorporated into a forward-looking economic cost mechanism as replacements for the components presently used in the Hatfield Model or BCPM.

The first workshop will present the staff's ideas for an approach to determining customer location. This workshop will be held on Wednesday, September 3, 1997, from 4:00–6:00 pm in the FCC Training Room, 2000 M Street, N.W. (Lobby Level), Room 110, Washington, D.C. 20554. The second workshop will present the staff's ideas for an approach to modeling outside plant investment. This workshop will be held on Thursday, September 11, 1997, from 10:00 am–12:00 noon in the Commission Meeting Room, 1919 M Street, NW, Room 856, Washington, D.C. 20554. Interested parties may attend the workshops. The workshops also will be recorded on video, and copies of the videotapes will be available in the Commission Reference Room, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

We solicit comment on the algorithms and approaches presented in the workshops. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on the September 3 customer location workshop on or before September 10, 1997, and may file comments on the September 10 outside plant workshop on or before September 24, 1997. Parties should reference the above docket numbers and send their comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties should also send one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Parties are also asked to send eight (8) copies of their comments to Sheryl Todd, Universal Service Branch, Common Carrier Bureau, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554.

Parties are also encouraged to submit their comments on diskette. Such diskette submissions are in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sheryl Todd of the Common Carrier Bureau, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows or compatible software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment on workshop) and date of submission. Each diskette should contain only one party's comments in a single electronic file. The diskette should be accompanied by a cover letter.

For further information about these workshops, contact Chuck Keller, (202) 418–7380, ckeller@fcc.gov.

Federal Communications Commission.

**Kathleen B. Levitz,**

*Deputy Chief, Common Carrier Bureau.*

[FR Doc. 97–23885 Filed 9–9–97; 8:45 am]

BILLING CODE 6712–01–P

cost model. See Federal-State Joint Board on Universal Service, Forward Looking Mechanism for High Cost Support for Non-Rural LECs, CC Docket Nos. 96–45 and 97–160, Further Notice of Proposed Rulemaking, FCC 97–256 (released July 18, 1997) 62 FR 42457 (August 7, 1997) (*FNPRM*) at paras. 17–18.

[4] *Order* at para. 245.

[5] *FNPRM* at para. 35.

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2223]**

### Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 4, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed September 25, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association. (CC Docket No. 88–57, RM–5643)

*Number of Petitions Filed:* 2.

*Subject:* Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications. (CC Docket No. 96–193)

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–23890 Filed 9–9–97; 8:45 am]

BILLING CODE 6712–01–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 part 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.

Stevens Forwarders, Inc., 527 Morley Drive, Saginaw, MI 48601, Officers: Morrison M. Stevens, President, John H. Stevens, Treasurer

Richard A. Banuelos d/b/a, Surface Sea Forwarding, 11240 N.E. Hwy, 104, Suite #A, Kingston, WA 98346, Sole Proprietor

Dated: September 4, 1997.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 97–23879 Filed 9–9–97; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 24, 1997.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. James Homer Shields, III*, London, England; to acquire an additional 2.84 percent, for a total of 11.49 percent, of the voting shares of Sebastian Bankshares, Inc., Barling, Arkansas, and thereby indirectly acquire River Valley Bank and Trust, Lavaca, Arkansas.

**B. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Judy Noe Myers*, Dallas, Texas; to retain a total of 14.82 percent of the voting shares of Rusk County Bancshares, Inc., Henderson, Texas, and thereby indirectly retain Peoples State Bank, Henderson, Texas.

*2. Carmen P. Smith Family Limited Partnership; Carmen P. Smith; and Peggie J. Woodruff, as General Partners*, all of Wichita Falls, Texas; to acquire 14.61 percent of the voting shares of AmeriBancShares, Inc., Wichita Falls, Texas, and AmeriBancShares of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire American National Bank, Wichita Falls, Texas.

Board of Governors of the Federal Reserve System, September 4, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–23864 Filed 9-9-97; 8:45 am]

BILLING CODE 6210-01-F

## 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 October 3, 1997.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. National Bank of Canada*, Montreal, Canada, and NatBC Holding Corporation, Hollywood, Florida; to become bank holding companies by acquiring 100 percent of the voting shares of Natbank, N.A., Hollywood, Florida, and thereby indirectly acquire Natbank, N.A. (the proposed National Bank successor to Natbank, F.S.B.).

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. Union Planters Corporation*, Memphis, Tennessee; to acquire 100 percent of the voting shares of Capital Bancorp, Miami, Florida, and thereby indirectly acquire Capital Bank, Miami, Florida.

**C. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Paradigm Bancorporation, Inc.*, Houston, Texas, and Paradigm Delaware Bancorporation, Inc., Dover, Delaware; to acquire 100 percent of the voting shares of First National Bank of Dayton, Dayton, Texas.

Board of Governors of the Federal Reserve System, September 4, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–23863 Filed 9-9-97; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL TRADE COMMISSION

**[File No. 962–3004]**

### London International Group, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before November 10, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:**

Jeffrey A. Klurfeld, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5270.

Linda K. Badger, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5275.

Kerry O'Brien, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356–5289.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement

containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for September 3, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent London International Group, Inc. (''London International'') a New Jersey corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

London International manufactures and markets various brands of condoms to the public, including Ramses brand condoms. The Commission's complaint charges that respondent's advertising contained unsubstantiated comparative strength representations. Specifically, the complaint alleges that the respondent did not possess adequate substantiation for claims that: (1) Ramses brand condoms are thirty percent stronger than the leading brand; and (2) Ramses brand condoms break thirty percent less often than the leading brand.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order would prohibit the respondent from making any claim about: (1) The comparative or quantifiable strength of any condom; (2) the comparative or quantifiable risk of breakage of any condom; or (3) the comparative or quantifiable efficacy of any condom, unless at the time of making the claim, it possesses and relies upon competent and reliable evidence.

Part I contains a provision that would permit respondent to make any claim about condoms that is approved by the Food and Drug Administration (''FDA'') without violating the settlement. This provision, however, excludes claims that the FDA has permitted through clearing a ''premarket notification report,'' unless the clearance was based on a review and evaluation of the substantiation submitted with the report.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements, as well as to all company executives and marketing and sales managers; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97–23979 Filed 9–9–97; 8:45 am]

BILLING CODE 6750–01–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 93N–0391]**

### Central Georgia Plasma Lab, Inc.; Revocation of U.S. License No. 0649–001

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 0649–001) and product license issued to Central Georgia Plasma Lab, Inc. (Central Georgia), for the manufacture of Source Plasma. A notice of opportunity for a hearing on a proposal to revoke the licenses was published in the **Federal Register** of May 20, 1994 (59 FR 26503). Central Georgia subsequently requested a hearing. However, in a letter dated July 12, 1996, the firm notified FDA that it had ceased operations effective June 25, 1996, and voluntarily requested revocation of its licenses. The request for an opportunity for a hearing on the issue of license revocation became moot. FDA, therefore, proceeded to revoke the firm's licenses.

**DATES:** The revocation of the establishment license (U.S. License No. 0649–001) and product license became effective August 21, 1996.

**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 has revoked the establishment license (U.S. License No. 0649–001), which includes the product license issued to Central Georgia Plasma Lab, Inc., 652 Third St., Macon, GA 31201, for the manufacture of Source Plasma.

By letter dated May 27, 1993, FDA notified Central Georgia that it was instituting proceedings to revoke U.S. License No. 0649–001, and announced its intent to issue a notice of opportunity for a hearing. Central Georgia responded in a letter of June 1, 1993, and advised FDA that the firm did not wish to waive its opportunity for a hearing. In the **Federal Register** of May 20, 1994 (59 FR 26503), FDA announced an opportunity for a hearing on the proposal to revoke the establishment and product license issued to Central Georgia. In the notice of opportunity for a hearing, FDA described its finding that Central Georgia had willfully not complied with the applicable standards and regulations. As described in the notice of opportunity for a hearing, the grounds for the proposed license revocation included the following: (1) The results of FDA's inspections of the firm, beginning in 1981, but most recently from July 1989 through February 1993; (2) a determination by FDA that the deviations documented during the inspections of the firm demonstrated significant noncompliance with the applicable regulations and the standards and conditions established in the firm's licenses; (3) a determination that the nature of the deficiencies noted demonstrated the continuing failure of the Responsible Head to exercise control of the establishment in all matters relating to compliance and to assure that personnel are adequately trained and properly supervised and have a thorough understanding of the procedures that they perform, as required by 21 CFR 600.10(a) and 606.20(a). Documentation in support of the proposed revocation had been placed on file for public examination with the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

Following publication of the notice of opportunity for a hearing and in accordance with the procedures set forth in parts 12 and 601 (21 CFR parts 12 and 601), on June 15, 1994, the Responsible Head of Central Georgia submitted a request for a hearing to the Dockets Management Branch and, on July 15, 1994, provided additional supplemental information to justify the request for a hearing.

While the request for a hearing was pending, the owner and former Responsible Head of Central Georgia informed the agency by letter dated July 12, 1996, that Central Georgia had closed its facility on June 24, 1996, and ceased operations effective June 25, 1996, and was voluntarily surrendering both the establishment and product licenses. FDA notified Central Georgia by letter of August 21, 1996, that the licenses had been revoked.

Based on the voluntary surrender of U.S. License No. 0649–001, Central Georgia's request for a hearing on the issue of license revocation became moot. Central Georgia effectively waived an opportunity for a hearing on the matter (§ 601.5(a)).

Accordingly, under § 601.5(a), section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 0649–001) and the product license issued to Central Georgia Plasma Lab, Inc., for the manufacture of Source Plasma were revoked, effective August 21, 1996.

This notice is issued and published under § 601.8 and the redelegation at 21 CFR 5.67.

Dated: August 25, 1997.

**Mark Elengold,**

*Acting Deputy Director, Center for Biologics Evaluation and Research.*

[FR Doc. 97–23946 Filed 9-9-97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: AIDS Drug Assistance Program [ADAP]: Monthly Client Utilization and Program Expenditure Assessment Project—NEW—State AIDS Drug Assistance Programs [ADAP], funded under section 2611 of the Public Health Service Act (commonly known as Title II of the Ryan White Comprehensive AIDS Resources Emergency [CARE] Act) are designed to provide low income, uninsured, and underinsured individuals with access to HIV/AIDS medications that prevent serious deterioration of health arising from HIV disease, including prevention and treatment of opportunistic diseases.

Due to the increasing need for pharmaceuticals among uninsured and underinsured low-income individuals who are HIV+ or diagnosed with AIDS, and recognizing the importance of program planning and budget forecasting to maximize resources, the Division of Service Systems [DSS], Health Resources and Services Administration [HRSA], proposes to collect relevant client utilization data and program expenditure information on a voluntary monthly reporting basis from State ADAPs. This effort is designed to assist Title II grantees, State ADAPs, the DSS/HRSA funding agency staff, and policymakers at both the Federal and State level to better understand the level of client need for medications that the programs are functioning under and the resources used to meet the needs, and to provide indicators of where future action may be required and the most appropriate response(s).

A report is proposed that will collect monthly data on the level of expenditures and client utilization of services. In addition, the report will provide a forum for tracking the most current changes in each State ADAP with respect to available funding, eligibility criteria, clinical guidelines, and formulary changes. On a quarterly basis, the report will also request the prices of eight specified pharmaceuticals dispensed by each program. The individual State reports will be compiled into summary reports and distributed back to grantees and State ADAPs on a monthly basis, and will be available for use by HRSA and the Office of Management and Budget. These results will be used to guide program planning, to formulate budget recommendations, and to monitor the balance between available resources and State needs. The burden estimates are as follows:

| Type of form | Number of respondents | Responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| ADAP Monthly Update | 54 | 12 | 1 | 648 |
| ADAP Quarterly Drug Pricing Update | 54 | 4 | 1 | 216 |
| Total | 54 | 16 | 1 | 864 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Laura Oliven, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 4, 1997.

**Jane Harrison,**

*Acting Director, Division of Policy Review and Coordination.*

[FR Doc. 97–23887 Filed 9–9–97; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request

A Pilot Study of *Helicobacter pylori* Infection and Mode of Transmission Among Children in Linqu County, Shandong Province, China.

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* A Pilot Study of *Helicobacter pylori* Infection and Mode of Transmission Among Children in Linqu County, Shandong Province, China. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The agency conducts and funds studies examining risk factors for infectious and chronic diseases that may be related to risk of cancer. This information collection is needed to evaluate data collection methods and the quality of the data collected prior to implementation with a larger study population. The data collection effort is needed to identify personal practices and environmental conditions which appear to contribute to H. pylori transmission. Questionnaire data obtained from mothers will be linked with existing H. pylori status data to investigate factors that may influence the prevalence of H. pylori infection in Linqu County children. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* Parents. The annual reporting burden is as follows: *Estimated Number of Respondents:* 98; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .33; *and Estimated Total Annual Burden Hours Requested:* 32. The annualized cost to respondents is estimated at: $21.33. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**REQUEST FOR COMMENTS:** Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Linda Morris Brown, MPH, Assistant Director for Epidemiology and Biostatistics, Division of Cancer Epidemiology and Genetics, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd., Executive Plaza North, Room 415, Bethesda, MD, 20892, or call non-toll-free number (301) 496–4153 or E-mail your request, including your address to: brownl@epndce.nci.nih.gov.

**COMMENTS DUE DATE:** Comments regarding this information collection are best assured of having their full effect if received on or before November 10, 1997.

Dated: September 4, 1997.

**Nancie L. Bliss,**

*OMB Project Clearance Liaison.*

[FR Doc. 97–23899 Filed 9–9–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute: Opportunities for Cooperative Research and Development Agreements (CRADAs) for the Development of New Targeted Drugs, Made Partly of Entities Provided by the National Cancer Institute (NCI), as Treatments for Patients With Cancer

The NCI is looking for multiple CRADA Collaborators to develop independently different aspects of their targeted drug technology with the goal of moving candidates into clinical trials.

**AGENCY:** National Institutes of Health, PHS, DHHS.

**ACTION:** Notice of opportunities for cooperative research and development.

**SUMMARY:** Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks Cooperative Research and Development Agreements (CRADAs) with pharmaceutical or biotechnology companies or academic institutions to create, optimize and test new targeted drugs as therapeutics for cancer.

Any CRADA for the biomedical use of this technology will be considered. The CRADAs would have an expected duration of one (1) to five (5) years. The goals of the CRADAs include the rapid publication of research results and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborators will have an option to negotiate the terms of an exclusive or nonexclusive commercialization license to subject inventions arising under the CRADAs.

**ADDRESSES:** Proposals and questions about this CRADA opportunity may be addressed to Dr. Thomas M. Stackhouse, Office of Technology Development, National Cancer Institute-Frederick Cancer Research and Development Center, P.O. Box B, Frederick, MD 21702–1201, Telephone: (301) 846–5465, Facsimile: (301) 846–6820.

**EFFECTIVE DATE:** Organizations must submit a confidential proposal summary preferably one page or less, to NCI within 90 days from date of this publication. Guidelines for preparing full CRADA proposals will be

communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

**SUPPLEMENTARY INFORMATION:**

## Technology Available

DHHS scientists are developing a variety of novel targeted drugs defined as a conjugated molecule consisting of a specific binding moiety, such as a monoclonal antibody, a receptor ligand or a similar construct, and a natural product or synthetic cytotoxic moiety which may include, but not be limited to the broad category of toxins and drugs. The specific binding and cytotoxic moieties would be joined by appropriate linker molecules. The NCI can provide a variety of natural product cytotoxic drugs either in the unaltered state or chemically-modified (to facilitate conjugation) as starting substances for the creation of new targeted drug agents. In addition, a limited number of monoclonal antibodies which can be used in this drug development effort are available from the NCI. The NCI can also provide the chemical expertise to modify agents, as well as the resources to test newly constructed agents in an *in vitro* cell line screen. Publications outlining these developments are available on request, and descriptions of other (unpublished) advances can be obtained from Dr. Stackhouse via a Confidential Disclosure Agreement.

DHHS now seeks collaborative arrangements for the creation, optimization, evaluation and possible clinical exploitation of these agents. A Cooperative Research and Development Agreement (CRADA) will be established to provide for distribution of intellectual property rights developed under the Agreement. The successful CRADA collaborator will provide expertise and experience in the preparation of targeted drugs, and will prepare one or more targeted drug candidates using starting substances provided jointly by the NCI and the CRADA collaborator. For targeted drug candidates selected for clinical trials, the Collaborator will also provide the necessary resources and expertise to perform tests to determine the drug candidate's physicochemical makeup, biological activity, stability and other characteristics necessary for filing an Investigational New Drug (IND) application with the FDA. The NCI will provide starting substances as well as consultation and expertise on drug preparation and development. Also, the NCI may elect to provide resources for preclinical and/or clinical evaluation, subject to future review and approval. CRADA aims will include rapid publication of research results as well as timely clinical evaluation and exploitation of any commercial opportunities.

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies .
3. Planning research studies and interpreting research results.
4. Additional support for preclinical and/or clinical development of the targeted drug candidate(s) derived from this CRADA. Commitment of substantial resources would require specific review and approval by the Decision Network Committee of the NCI's Division of Cancer Treatment, Diagnosis, and Centers (DCTDC). These resources may include:

(A) *In vitro* testing in the DCTDC cell line screen.

(B) Assistance with design and conduct of preclinical *in vivo* efficacy experiments.

(C) Toxicology experiments.

(D) Provision of additional starting materials for use by the Collaborator in preparing final targeted drug product.

(E) IND filing and sponsorship of clinical trials.

5. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
4. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
5. Production, by current Good Manufacturing Practices (cGMP), purification, vialing, product release, and post-release testing of targeted drug candidates for clinical trials.
6. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.
2. The demonstration of adequate resources to perform the research and development of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
3. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.
4. The demonstration of expertise in the commercial development and production of products related to this area of technology.
5. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.
6. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
7. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
8. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: August 25, 1997.

**Kathleen Sybert,**

*Acting Director, Office of Technology Development, National Cancer Institute, National Institutes of Health.*

[FR Doc. 97–23901 Filed 9–9–97; 8:45 am]

BILLING CODE 4140–01–P

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following

National Cancer Institute Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Science Enrichment Program.

*Date:* September 29–30, 1997.

*Time:* 8:00 a.m. to 5:00 p.m.

*Place:* National Cancer Institute, Executive Plaza North, Conference Room J, 6130 Executive Boulevard, Bethesda, MD 20892.

*Contact Person:* Wilna Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7410, Telephone: 301/496–7903.

*Purpose/Agenda:* To evaluate and review responses to Requests for Proposals.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cnacer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: September 4, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–23894 Filed 9–9–97; 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 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 Heart, Lung, and Blood Special Emphasis Panel (SEP) meetings:

*Name of SEP:* Cooperative Agreement on Asthma Clinical Research Network.

*Date:* October 1, 1997.

*Time:* 8:00 a.m.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

*Contact Person:* Anne P. Clark, Ph.D, Two Rockledge Center, Room 7186, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0280.

*Purpose/Agenda:* To review and evaluate cooperative agreement applications.

*Name of SEP:* Review of Institutional National Research Service Awards (T32s), Short-term Training Students in Health Professional Schools Awards (T35s), Independent Scientist Awards (K02s), and Mentored Clinical Scientist Development Awards (K08s).

*Date:* October 13–14, 1997.

*Time:* 8:00 a.m.

*Place:* Hyatt Regency, One Bethesda Metro, Bethesda, Maryland 20814.

*Contact Person:* S. Charles Selden, Ph.D., Two Rockledge Center, Room 7196, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0288.

*Purpose/Agenda:* To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/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. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 4, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–23895 Filed 9–9–97; 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 National Heart, Lung, and Blood Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, October 23–24, 1997, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland.

The Council meeting will be open to the public on October 23 from 8:30 a.m. to approximately 3:00 p.m. for discussion of program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., section 10(d) of Public Law 92–463, the meeting will be closed to the public from approximately 3:00 p.m. on October 23 to adjournment on October 24, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

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. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Rockledge Building (RKL2), Room 7100, National Institutes of Health, Bethesda, Maryland 20892, (301) 435–0260, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: September 4, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–23897 Filed 9–9–97; 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 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 meetings of the National Institute of Mental Health Initial Review Group:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* Epidemiology and Genetics Review Committee.

*Date:* October 6–October 7, 1997.

*Time:* 8:30 a.m.

*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Shirley Williams, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

*Committee Name:* Mental Disorders of Aging Review Committee.

*Date:* October 9–October 10, 1997.

*Time:* 8:30 a.m.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Richard Johnson, Parklawn, Room 901–18, 5600 Fishers Lane, Rockville, MD 20852. Telephone: 301, 443–1367.

*Committee Name:* Clinical Psychopathology Review Committee.

*Date:* October 9–October 10, 1997.

*Time:* 8:30 a.m.
*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Gavin T. Wilkom, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

*Committee Name:* Neuropharmacology and Neurochemistry Review Committee.
*Date:* October 9–October 10, 1997.
*Time:* 8:30 a.m.
*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
*Contact Person:* Donna Ricketts, Parklawn, Room 9–01, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

*Committee Name:* Molecular, Cellular, and Developmental Neurobiology Review Committee.
*Date:* October 13–October 14, 1997.
*Time:* 8:30 a.m.
*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
*Contact Person:* Donna Ricketts, Parklawn, Room 9–01, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

*Committee Name:* Services Research Review Committee.
*Date:* October 14–October 15, 1997.
*Time:* 8:30 a.m.
*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
*Contact Person:* Gavin T. Wilkom, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

*Committee Name:* Psychobiology, Behavior, and Neuroscience Review Committee.
*Date:* October 16–October 17, 1997.
*Time:* 9 a.m.
*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Deborah A. DeMasse, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

*Committee Name:* Perception and Cognition Review Committee.
*Date:* October 16–October 17, 1997.
*Time:* 8:30 a.m.
*Place:* Wyndham Bristol Hotel, 2430 Pennsylvania Ave., N.W., Washington, DC 20037.
*Contact Person:* Regina M. Thomas, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

*Committee Name:* Cognitive Functional Neuroscience Review Committee.
*Date:* October 16–October 17, 1997.
*Time:* 8:30 a.m.
*Place:* One Washington Circle, One Washington Circle, N.W., Washington, DC 20037.
*Contact Person:* Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

*Committee Name:* Clinical Centers and Special Projects Review Committee.
*Date:* October 20–October 21, 1997.
*Time:* 8:30 a.m.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
*Contact Person:* W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

*Committee Name:* Health Behavior and Prevention Review Committee.
*Date:* October 20–October 21, 1997.
*Time:* 8:30 a.m.
*Place:* St. James Hotel, 950 24th Street, N.W., Washington, DC 20037.
*Contact Person:* Monica F. Woodfork, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

*Committee name:* Clinical Neuroscience and Biological Psychopathology Review Committee.
*Date:* October 22–October 24, 1997.
*Time:* 9 a.m.
*Place:* Avenue Plaza Hotel, 2111 St. Charles Avenue, New Orleans, LA 70130.
*Contact person:* Maureen L. Eister, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

*Committee name:* Treatment Assessment Review Committee.
*Date:* October 23–October 24, 1997.
*Time:* 8:30 a.m.
*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact person:* Gavin T. Wilkom, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

*Committee name:* Violence and Traumatic Stress Review Committee.
*Date:* October 23–October 24, 1997.
*Time:* 8:30 a.m.
*Place:* Latham Hotel, 3000 M Street, N.W., Washington, DC 20007.
*Contact person:* Sheri L. Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4843.

*Committee name:* Child/Adolescent Development, Risk, and Prevention Review Committee.
*Date:* October 23–October 24, 1997.
*Time:* 9 a.m.
*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Ave., Chevy Chase, MD 20815.
*Contact person:* Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

*Committee name:* Child Psychopathology and Treatment Review Committee.
*Date:* October 27–October 28, 1997.
*Time:* 8:30 a.m.
*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Contact person:* Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

*Committee name:* Social and Group Processes Review Committee.
*Date:* November 6–November 7, 1997.
*Time:* 8:30 .m.
*Place:* The George Washington University Inn, 824 New Hampshire Avenue, N.W., Washington, DC 20037.
*Contact person:* Rehana A. Chowdhury, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

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 Numbers 93.242, 93.281, 93.282)

Dated: September 4, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–23892 Filed 9–9–97; 8:45 am]

BILLING CODE 4140–01–M

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Child Health and Human Development Council and Its Subcommittee on Planning and Policy

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council on September 22–23, 1997. The meeting will be held in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. The Subcommittee on Planning and Policy will be held on September 22, 1997, in Building 31, Room 2A03, from 8:00 a.m. to 9:30 a.m. The Subcommittee meeting will be open to the public and the agenda includes program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

The Council meeting will be open to the public in September 22 from 10:00 a.m. until 5:30 p.m. The agenda includes reports by the Director, NICHD, and the National Center for Medical Rehabilitation Research, a presentation by the Scientific Director, NICHD, and other business of the Council. The meeting will be open on September 23 upon completion of the review of applications at approximately 1:00 p.m. to adjournment if any policy issues are raised which need further discussion.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), Title 5, United States Code and section 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on September 23

from 8:00 a.m. to approximately 1:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NACHHD Council, 6100 Executive Boulevard, Room 5E03, National Institutes of Health, Bethesda, Maryland 20892–7510, Area Code 301, 594–7232, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research, and 93.865, Research for Mothers and Children], National Institutes of Health)

Dated: September 4, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–23893 Filed 9–9–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting of the National Deafness and Other Communication Disorders Advisory Council

Notice is hereby given of a change in the September 11 meeting of the National Deafness and Other Communication Disorders Advisory Council which was published on August 7, 1997, 62 FR 42587.

The meeting was to have been a closed meeting convened at 1 pm and adjourned at 2 pm on September 11. The meeting has been changed to a partially closed meeting. The Council will meet in open session from 1 pm to approximately 1:45 pm to discuss a meeting of the Work Group on Peer Review. At approximately 1:45 pm the meeting will be closed until adjournment for the review of grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 4, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–23896 Filed 9–9–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Natiional Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; 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:

*Purpose/Agenda:* To review and evaluate grant applications.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date of Meeting:* September 12, 1997.

*Time:* 8:30 a.m. to adjournment.

*Place of Meeting:* Holiday Inn, 5520 Wisconsin Avenue, Bethesda, MD 20815.

*Contact Person:* Elsie Taylor, 6000 Executive Boulevard, Suite 409, Rockville, MD 20892–7003, 301–443–9787.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The proposal and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposal, 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 meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: September 4, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–23898 Filed 9–9–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: For Nucleic Acid-Based Vaccines and Therapeutics

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Application Number 08/286,730 entitled, ''Liposomal Delivery System for Nucleic Acids,'' and its Continuation-In-Part U.S. Patent Application Serial Number 08/522,246, and all related foreign filings (PCT/US95/09867), invented by Alain Thierry formerly of the National Cancer Institute, to Biovector Therapeutics, S.A of Labage, France. The patent rights in these inventions have been assigned to the United States of America.

**DATES:** Only written comments and/or applications for a license which are received by NIH on or before December 9, 1997 will be considered.

**ADDRESSES:** Requests for copies of the subject issued patent and pending patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Larry M. Tiffany, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852; Telephone: (301) 496–7056, ext. 206; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the pending patent applications.

**SUPPLEMENTARY INFORMATION:** The present invention relates to a liposome composition comprising a bi- or multi-layered membrane surrounding an internal aqueous liposome comprising at least one cationic lipopolyamine and at least one neutral lipid provided in a molar ratio range, said ratio from about .02:1 to 2:1. In addition to the pending composition claims there are also pending rights to methods of preparing the liposome composition, pharmaceutical compositions including the liposome and methods of introducing nucleic acids into cells using the liposome. This invention is advantageous over alternative lipid preparations due to its ability to more

easily form liposomes at physiological temperatures and pH hence making it potentially more stable in-vivo.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use would be limited to nucleic acid-based vaccines and therapeutics.

Applications for a license to the field of use described in this Notice will be treated as objections to the contemplated license. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 2, 1997.

**Barbara M. McGarey,**

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 97–23900 Filed 9–9–97; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration Center for Mental Health Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a teleconference meeting of the Center for Mental Health Services (CMHS) National Advisory Council in September 1997.

The meeting will include the review, discussion, and evaluation of individual grant applications. Therefore, the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

An agenda and a roster of Council members may be obtained from Ms. Patricia Gratton, Committee Management Officer, CMHS, Room 11C–26, Parklawn Building, Rockville, Maryland 20857, Telephone (301) 443–7987.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

*Committee Name:* CMHS National Advisory Council.

*Meeting Date:* September 26, 1997.

*Place:* CMHS Conference Room, 5600 Fishers Lane, Room 15–94, Rockville, MD 20857.

*Closed:* September 26, 1997, 2:00–4:00 p.m., EDT.

*Contact:* Ina B. Lyons, Room 13–103, Parklawn Building, Telephone: (301) 443–7586 and FAX (301) 443–5163.

Dated: September 4, 1997.

**Jeri Lipov,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 97–23886 Filed 9–9–97; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Availability of Draft Supplemental Information Regarding the Recovery Plan for the Grizzly Bear (Ursus Arctos Horribilis) for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The Fish and Wildlife Service (Service) announces the availability for public review of draft supplemental information to the recovery plan for the grizzly bear (*Ursus arctos horribilis*). This information addresses certain aspects of the recovery plan. Portions of the information will be added to the Grizzly Bear Recovery Plan. The Service solicits review and comment from the public on this draft information.

**DATES:** Comments on the draft supplemental information must be received on or before November 10, 1997 to ensure they receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft supplemental information may obtain a copy by contacting the Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, University of Montana, Missoula, Montana 59812. Written comments and materials regarding this information should be sent to the Recovery Coordinator at the address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above), at telephone (406) 243–4903.

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened animal or plan to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

Under the provisions of the Endangered Species Act of 1973 (Act) as amended (16 U.S.C. 1531 *et seq.*), the Service approved the revised Grizzly Bear Recovery Plan on September 10, 1993. The Plan approved in 1993 did not contain a complete chapter on the Bitterroot or North Cascade ecosystems because the specific information necessary to develop these chapters was not available. The Service approved the Bitterroot Ecosystem Grizzly Bear Recovery Plan Chapter and the North Cascades Ecosystem Recovery Plan Chapter on September 11, 1996, and June 23, 1997, respectively.

In May 1994 The Fund For Animals, Inc., and 22 other organizations and individuals filed suit in the U.S. District Court for the District of Columbia over the adequacy of the Plan approved in 1993. Later in May 1994 the National Audubon Society and 19 other organizations and individuals also filed suit in the same court. The two cases were eventually consolidated. In September 1995 the court issued an opinion. The motions for summary judgment of both the plaintiffs and the defendants were granted in part and denied in part. The court ordered the Service to reconsider certain portions of the Plan, and to provide supplemental information. The information presented in the document being made available for review includes supplemental information that the Service was to provide and the results of its reconsideration.

The Service is also in the process of developing habitat based recovery criteria to be added to the Plan. Those criteria are not included in the information being made available now. The habitat based recovery criteria will be made available for public review at a later date.

Section 4(f) of the Act, as amended in 1988, requires that public notice and an

opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1995 (40 FR 31734). Threats to grizzly bear populations come primarily from habitat modification caused by human activities and from direct bear/human conflicts resulting from recreational and resource use activities, highway and railroad corridors, illegal mortality, etc. The grizzly bear population in each of the ecosystems included in the Plan can be delisted independently once recovery criteria stated in the Plan are met.

### Public Comments Solicited

The Service solicits written comments on the supplemental information described above. All comments received by the date specified in the DATES section above will be considered prior to finalization of the information. Appropriate portions of the information will be appended to, and become part of, the Plan.

### Authority

The authority for this section is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 3, 1997.

**Terry T. Terrell,**

*Deputy Regional Director, Denver, Colorado.*

[FR Doc. 97–23938 Filed 9–9–97; 8:45 am]

BILLING CODE 4310–55–M

---

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Klamath Fishery Management Council; Meeting

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. This purpose of this meeting is to review management of the 1997 fishery season and discuss management strategies for the 1998 season. The meeting is open to the public.

**DATES:** The Klamath Fishery Management Council will meet from 3 p.m. to 5 p.m. on Wednesday, October 1, 1997; from 9 a.m. to 5 p.m. on Thursday, October 2, 1997; and from 8 a.m. to 12 p.m. on Friday, October 3, 1997.

**PLACE:** The meeting will be held at the Best Western Brookings Inn, Highway 101 North, Brookings, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, PO Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

**SUPPLEMENTARY INFORMATION:** For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: September 2, 1997.

**Cynthia U. Barry,**

*Acting Regional Director.*

[FR Doc. 97–23936 Filed 9–9–97; 8:45 am]

BILLING CODE 4310–55–P

---

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Lease To Construct and Operate a Combined Municipal Solid Waste (MSW) and Construction and Demolition (C&D) Waste Facility on the Nambe Indian Reservation, Santa Fe County, NM

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of intent and public scoping meeting.

**SUMMARY:** This notice advises the public that the Bureau of Indian Affairs, in cooperation with the Pueblo of Nambe, the Nambe Pueblo Development Corporation and their environmental consultants, intends to prepare an Environmental Impact Statement (EIS) for a proposed lease to construct and operate a combined municipal solid waste (MSW) and construction and demolition (C&D) waste facility in Santa Fe County, New Mexico. A description of the proposed project, location, and environmental issues to be addressed in the EIS are provided below (Supplementary Information). In addition to this notice, a public meeting will be held to describe the proposed action and to receive public comments regarding the scope of the EIS. The public will be invited to participate in the scoping process, review of the draft EIS and public meeting.

This notice is published in accordance with the National Environmental Policy Act (NEPA) regulations found in 40 CFR 1501.7. The purpose of this notice is to solicit suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are encouraged.

**DATES:** Written comments must arrive by October 25, 1997. A public scoping meeting will be held on September 25, 1997.

**ADDRESSES:** Address comments to Mr. Rob Baracker, Area Director, Albuquerque Area Office, P.O. Box 26567, Albuquerque, NM 87125–6567. The public scoping meeting will be held at 6:00 p.m. on September 25, 1997, at the Nambe Pueblo Fuel Terminal east of Allsup's Convenience Store, at the Cuyamungue Arroyo on U.S. Route 84/285.

**FOR FURTHER INFORMATION CONTACT:** Mr. Al Sedik, Area Environmental Scientist, Bureau of Indian Affairs, Albuquerque, NM 87125–6567, telephone number (505) 766–1039.

**SUPPLEMENTARY INFORMATION:** High Mesa Environmental LLC (High) proposes to lease 100 acres of the Nambe Indian Reservation for the purposes of constructing and operating a combined MSW and C&D waste facility for a variety of non-hazardous wastes. The project will meet all applicable environmental standards and regulations.

The proposed project includes an initial C&D-only waste cell, with an operations area, and a site well. Ultimately, the facility will include five additional cells for combined MSW and C&D waste, two collection ponds, monitoring wells and a leachate evaporation pond. The combined waste cells will be lined. Approximately 200 to 400 tons per day of waste material would be delivered to the facility by truck. Offsite roadway improvements would be necessary.

The project area is in the central portion of the Espanola Basin, part of the Alamosa-Santa Fe segment of Rio Grande rift, 17 miles northwest of Santa Fe, New Mexico. This is an isolated site, located three miles from the Pueblo proper with no infrastructure such as water, power, or roads. The terrain in this area is steep and mostly clay, with

very little to no vegetation. The area is considered badlands, with no potential for recreational use now or in the future.

The EIS will assess alternatives to the proposed project, including (1) a smaller project, (2) alternative waste stream management, and (3) no action. The EIS will address numerous environmental issues, including geology, topography, soils, water resources, air quality, living resources, cultural resources, traffic, land use, visual resources, socioeconomics, public health and safety, and noise. The range of issues addressed may change, depending on comments received during the scoping process.

Dated: September 2, 1997.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 97–23902 Filed 9–9–97; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–910–0777–61–241A]**

### State of Arizona Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Arizona Resource Advisory Council meeting, notice of meeting.

**SUMMARY:** This notice announces a meeting of the Arizona Resource Advisory Council. The meeting will be held October 7, 1997, beginning at 8:30 a.m. in the Montana Room at the Bureau of Land Management National Training Center, 9828 N. 31st Avenue, Phoenix, Arizona. The agenda items to be covered at the one-day meeting include: Welcome Remarks to newly-appointed 1997–99 RAC members; BLM State Director's Update on legislation, regulations and statewide planning efforts; Review of previous meeting minutes; Review of RAC charter and election of Vice-Chairperson; Update on BIA Cooperating Agency Status; Followup on letter to Director Shea on standards and guidelines implementation and impacts of FWS biological opinions; Orientation on RAC Working Groups for new members; Reports by the Recreation and Public Relations Working Groups; Reports from RAC members; RAC Discussion on future meeting dates and locations. A public comment period will take place at 11:30 a.m. for any interested publics who wish to address the Council.

**FOR FURTHER INFORMATION CONTACT:** Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

**Joan B. Losacco,**

*Deputy State Director, External Affairs.*

[FR Doc. 97–23937 Filed 9–9–97; 8:45 am]

BILLING CODE 4310–32–M

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services FY 1998 Community Policing Discretionary Grants

**AGENCY:** Office of Community Oriented Policing Services, Department of Justice.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of Justice, Office of Community Oriented Policing Services (''COPS'') announces the availability of grants to hire and/or rehire additional sworn law enforcement officers to engage in community policing. The COPS Universal Hiring Program permits interested agencies to supplement their current sworn forces or jurisdictions to establish a policing agency. Eligible applicants include State, local, and Indian policing agencies, jurisdictions seeking to establish a new policing agency and other agencies serving specialized jurisdictions, such as transit, housing, college, school, or natural resources.

**DATES:** COPS Universal Hiring Program Application Kits are currently available. There will be two application deadlines for the Universal Hiring Program: November 14, 1997 and January 30, 1998.

**ADDRESSES:** COPS Universal Hiring Program Application Kits may be obtained by writing to COPS Universal Hiring Program, 1100 Vermont Avenue, NW, Washington, DC, 20530, or by calling the Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770, or the full application kit is also available on the COPS Office web site at: http://www.usdoj.gov/cops. Completed application kits should be sent to COPS Universal Hiring Program, COPS Office, 1100 Vermont Avenue, N.W., Washington, D.C. 20530.

**FOR FURTHER INFORMATION CONTACT:** The Department of Justice Crime Bill Response Center, (202) 307–1480 or 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

#### Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants for the hiring or rehiring of law enforcement officers to engage in community policing. The COPS Universal Hiring Program permits interested agencies to supplement their current sworn forces or to establish a new policing agency, through grants for up to three years. All policing agencies, as well as jurisdictions considering establishing new policing agencies, are eligible to apply for this program. In addition, policing agencies serving specialized jurisdictions, such as transit, housing, college, school, natural resources, and others, are eligible to apply for this program. There are two application deadlines for this program: November 14, 1997 and January 30, 1998. Departments may apply before either of the deadlines and equal consideration will be given to all applications submitted by the same deadline.

All applicants will be asked to provide basic community policing and planning information for their area of jurisdiction. In addition, new applicants serving jurisdictions of 50,000 and over, as well as all those jurisdictions seeking to establish a department and agencies serving specialized jurisdictions (such as transit, housing, college, school, or natural resources), will be asked to provide additional information relating to the applicant's community policing plan, local community policing initiatives and strategies, local community support for the applicant's community policing plan, and plans for retaining the officers at the end of the grant period. In addition to the requested community policing information, all applicants will be asked to submit a streamlined budget summary containing information relating to planned hiring levels, salary and fringe benefits, and decreasing federal share requirements. The COPS Universal Hiring Program Application offers two alternative budget worksheets which are tailored to the number of officers requested by each applicant; applicants requesting five or fewer officers will complete one budget worksheet for each officer, while applicants requesting more than five officers will complete a single budget worksheet based on the average yearly cost per officer.

Grants will be made for up to 75 percent of the total entry-level salary and benefits of each officer over three years, up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Waivers of the non-federal matching requirement may be requested under this program, but will be granted only upon a showing of extraordinary fiscal hardship. Grant funds may be used only for entry-level

salaries and benefits. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant.

In hiring new officers with a COPS Universal Hiring Program grant, grantees must follow standard local recruitment and selection procedures. All personnel hired under this program will be required to be trained in community policing. In addition, all personnel hired under this program must be *in addition to*, and not in lieu of, other hiring plans of the grantees.

An award under the COPS Universal Hiring Program will not affect the eligibility of an agency for a grant under any other COPS program.

The Catalog of Federal Domestic Assistance reference number for this program is 16.710.

Dated: August 29, 1997.

**Joseph E. Brann,**

*Director.*

[FR Doc. 97–23986 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–AT–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Water Act and the Safe Drinking Water Act

Under 28 C.F.R. 50.7, notice is hereby given that on August 25, 1997, a proposed Consent Decree in *United States* v. *Bethlehem Steel Corp.*, Civil Action No. 2–96–096, was lodged with the United States District Court for the Northern District of Indiana.

In this action, the United States sought penalties and injunctive relief for claims under Section 301(a) of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), for unpermitted discharges of pollutants, and for claims under Section 1423 of the Safe Drinking Water Act, 42 U.S.C. 300h–2, for violation of underground injection control (''UIC'') permits issued by EPA. The claims arose in connection with Bethlehem Steel Corporation's facility in Burns Harbor, Indiana. Under the Consent Decree, Bethlehem Steel Corporation will pay a civil penalty of $441,300 and will perform injunction relief, including the continued operation and maintenance of a series of dewatering wells designed to prevent unpermitted discharges of pollutants, the reconstruction of a blast furnace slag quench basin, and the training of operators of its underground injection control wells.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the 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. *Bethlehem Steel Corp.*, D.J. Ref. No. 90–5–1–1–4271.

The Consent Decree may be examined at the Office of the United States Attorney, 1001 Main St., Suite A, Dyer, IN 46311, at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of $13.75 ($.25 per page reproduction costs) payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–23877 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Proposed Final Judgment and Competitive Impact Statement

*United States* v. *USA Waste Services, Inc. et al.*

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in the Western District of Pennsylvania, Pittsburgh Division, Civil No. 97–1524.

On August 22, 1997, the United States filed a Complaint alleging that the proposed acquisition by USA Waste through Riviera of the voting stock of United Waste would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint further alleges that competition in providing disposal services to haulers of MSW generated in Allegheny County and competition in providing hauling of MSW generated in Allegheny County would be lessened by the acquisition. The proposed Final Judgment, filed the same time as the Complaint, requires USA Waste to divest the Kelly Run Landfill in Pittsburgh, Pennsylvania, which it will obtain in connection with its acquisition of United Waste.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530 (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Hold Separate Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W., Washington, D.C. 20530, (202) 514–2481. Copies of these materials may be obtained upon request and payment of a copying fee.

**Constance K. Robinson,**

*Director of Operations.*

### United States District Court, Western District of Pennsylvania, Pittsburgh Division

United States of America, and Commonwealth of Pennsylvania Plaintiffs, v. USA Waste Services, Inc., Riviera Acquisition Corporation, and United Waste Systems, Inc. Defendants. Civil No.: 97–1524. Filed 8/22/97, Judge Ambrose.

### Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Western District of Pennsylvania.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiffs have not withdrawn their consent, which they may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the

proposed Final Judgment, and shall, from the date of the signing of this Stipulation., comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event (a) plaintiffs have withdrawn their consent, as provided in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: August 21, 1997.

For Plaintiff United States:

Frederick H. Parmenter,

*U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, D.C. 20530, (202) 307–0620.*

Linda L. Kelly,

*United States Attorney.*

Amy Reynolds Hay,

*Assistant United States Attorney, Western District of Pennsylvania.*

For the Commonwealth of Pennsylvania Office of the Attorney General:

D. Michael Fisher,

*Attorney General.*

James A. Donahue, III,

*Chief Deputy Attorney General, Antitrust Section.*

Garrett F. Gallia,

*Deputy Attorney General, Antitrust Section.*

Attorneys for the Commonwealth of Pennsylvania:

14th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120, (717) 787–4530

For Defendants USA Waste Services, Inc. and Riviera Acquisition Corporation:

James R. Weiss,

*Preston, Gates, Ellis & Rouvelas Meeds, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20530, (202) 662–8425.*

For Defendant United Waste Systems, Inc.

Ilene Knable Gotts,

*Wachtell, Lipton, Rosen & Katz, 51 West 52d Street, New York, New York 10019–6150, (212) 403–1247.*

## Order

It is *so ordered*, this 22nd day of August, 1997.

Donetta Ambrose,

*United States District Judge.*

## United States District Court, Western District of Pennsylvania, Pittsburgh Division

United States of America, and Commonwealth of Pennsylvania Plaintiffs, versus USA Waste Services, Inc., Riviera Acquisition Corporation, and United Waste Systems, Inc., Defendants. Civil No.: 97–1524. Filed: 8/22/97, Judge Ambrose.

## Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

### I

*Definitions*

As used in this Hold Separate and Order:

A. ''USA Waste'' means defendant USA Waste Services, Inc., a Delaware corporation with its headquarters, in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. ''Riviera'' means defendant Riviera Acquisition Corporation, a Delaware corporation which is a wholly owned subsidiary of USA Waste, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. ''United'' means defendant United Waste Systems, Inc., a Delaware corporation with its headquarters, in Greenwich, Connecticut, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. ''Allegheny County'' refers to Allegheny County, Pennsylvania.

E. ''Kelly Run Sanitation'' means Kelly Run Sanitation, Inc., which is a wholly owned subsidiary of United, and all assets excluding the hauling business, including:

1. All tangible assets, including all fee and all leasehold and renewal rights in a landfill located at Road #3, Route 51, Elizabeth, Pennsylvania 15037 (known as Kelly Run Landfill); the garage and related facilities; offices; and landfill-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and

2. All intangible assets, including landfill-related customer lists, contracts, and accounts.

F. ''Hauling Business'' means the Kelly Run Sanitation hauling-related assets, including.

1. All tangible assets, including capital equipment, trucks and other vehicles, interest, permits, supplies, and related facilities, except the garage and related facilities, located at Road #3, Route 51, Elizabeth, Pa. 15037; and

2. All intangible assets, including hauling-related customer lists, contracts, and accounts.

G. ''Hauling'' means the collection of nonhazardous solid waste from customers and the transporting of the collected waste to disposal sites.

H. ''Waste Disposal Business'' means the business of disposing of nonhazardous solid waste into Pennsylvania Department of Environmental Protection approved disposal sites.

### II

*Objectives*

The Final Judgment filed in this case is meant to ensure USA Waste's prompt divestiture of Kelly Run Sanitation for the purpose of maintaining a viable competitor in the waste disposal business in Allegheny County to remedy the effects that the United States and the Commonwealth of Pennsylvania allege would otherwise result from USA Waste's proposed acquisition of United. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that Kelly Run Sanitation which is being divested be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the divestiture.

### III

*Hold Separate Provisions*

Until the divestiture required by the Final Judgment has been accomplished:

A. USA Waste shall preserve, maintain, and operate Kelly Run Sanitation and the Hauling Business as an independent competitor with management, sales and operations held entirely separate, distinct and apart from those of USA Waste. USA Waste

shall not coordinate the marketing or sale of its waste disposal and hauling business with the waste disposal and hauling business at Kelly Run Sanitation and the Hauling Business. Within thirty (30) days of the entering of this Order, USA Waste will inform plaintiffs of the steps taken to comply with this provision.

B. USA Waste shall take all steps necessary to ensure that Kelly Run Sanitation and the Hauling Business will be maintained and operated as an independent, ongoing, economically viable and active competitor in the waste disposal and hauling business in Allegheny County; and that the management of Kelly Run Sanitation will not be influenced by USA Waste, and the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with Kelly Run Sanitation and the Hauling Business will be kept separate and apart from the operations of USA Waste. USA Waste's influence over Kelly Run Sanitation and the Hauling business shall be limited to that necessary to carry out USA Waste's obligations under this Order and the Final Judgment.

C. USA Waste shall use all reasonable efforts to maintain and increase waste disposal and hauling sales at Kelly Run Sanitation and the Hauling Business, and shall maintain at 1996 or previously approved levels, whichever are higher, promotional, advertising, sales, technical assistance, marketing and merchandising support for the disposal and hauling of waste associated with Kelly Run Sanitation.

D. USA Waste shall provide sufficient working capital to maintain Kelly Run Sanitation and the Hauling Business as an economically viable, ongoing business.

E. USA Waste shall take all steps necessary to ensure that the Kelly Run Landfill is fully maintained in operable condition at no lower than its current rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for Kelly Run Sanitation and the Hauling Business.

F. USA Waste shall not, except as part of a divestiture approved by plaintiffs, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any assets of Kelly Run Sanitation, including intangible assets that relate to the permits described in Section II of the Final Judgment.

G. USA Waste shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of Kelly Run Sanitation and the Hauling Business.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Agreement, defendants shall not hire and defendants shall not transfer or terminate, or alter any current employment or salary agreements for any USA Waste or United employees who (i) on the date of the signing of this Agreement, work at Kelly Run Sanitation and the Hauling Business or (ii) are members of management referenced in Section III(I) of this Order.

I. Until such time as Kelly Run Sanitation is divested, the Assets to be Divested shall be managed by Stephen M. Callahan. Stephen M. Callahan shall have complete managerial responsibility for Kelly Run Sanitation and the Hauling Business, subject to the provisions of this Order and the Final Judgment. In the event that Stephen M. Callahan is unable to perform his duties, USA Waste shall appoint, subject to plaintiffs' approval, a replacement within ten (10) working days. Should USA Waste fail to appoint a replacement acceptable to plaintiffs within ten (10) working days, plaintiffs shall appoint a replacement.

J. USA Waste shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture contemplated by the Final Judgment or until further Order of the Court.

Dated: August 21, 1997.

For Plaintiff United States:

Frederick H. Parmenter,

*U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, D.C. 20530, (202) 307–0620.*

Linda L. Kelly,

*United States Attorney.*

Amy Reynolds Hay,

*Assistant United States Attorney, Western District of Pennsylvania.*

For the Commonwealth of Pennsylvania Office of the Attorney General:

D. Michael Fisher,

*Attorney General.*

James A. Donahue, III,

*Chief Deputy Attorney General, Antitrust Section.*

Garrett F. Gallia,

*Deputy Attorney General, Antitrust Section.*

Attorneys for the Commonwealth of Pennsylvania:

14th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120, (717) 787–4530

For Defendants USA Waste Services, Inc. and Riviera Acquisition Corporation

James R. Weiss,

*Preston, Gates, Ellis & Rouvelas Meeds, 1735 New York Avenue, N.W., Suite 500, Washington, D.C. 20530, (202) 662–8425.*

For Defendant United Waste Systems, Inc.

Ilene Knable Gotts,

*Wachtell, Lipton, Rosen & Katz, 51 West 52d Street, New York, New York 10019–6150, (212) 403–1247.*

## Order

It is *so ordered*, this 22d day of August, 1997.

Donetta Ambrose,

*United States District Judge.*

## United States District Court, Western District of Pennsylvania, Pittsburgh Division

United States of America, and Commonwealth of Pennsylvania Plaintiffs, v. USA Waste Services, Inc., Riviera Acquisition Corporation, and United Waste Systems, Inc. Defendants. Civil No.: 97–1524. Filed: 8/22/97, Judge Ambrose.

## Final Judgment

*Whereas,* plaintiffs, the United States of America and the Commonwealth of Pennsylvania, and defendants USA Waste Services, Inc. (''USA Waste''), Riviera Acquisition Corporation (''Riviera''), and United Waste Systems, Inc. (''United''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

*And whereas,* defendants have agreed to be bound by the provision of this Final Judgment pending its approval by the Court;

*And whereas,* the essence of this Final Judgment is the prompt and certain divestiture of Kelly Run Sanitation, Inc. to assure that competition is not substantially lessened;

*And whereas,* plaintiffs require defendants to make certain divestitures for the purpose of establishing a viable competitor in the disposal business in the Allegheny County, Pennsylvania area;

*And whereas,* defendants have represented to the plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*Now, therefore,* before the taking of any testimony, and without trial or

adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

**I**

*Jurisdiction*

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

**II**

*Definitions*

As used in this Final Judgment:

A. ''USA Waste'' means defendant USA Waste Services, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. ''Riviera'' means defendant Riviera Acquisition Corporation, a Delaware corporation which is a wholly owned subsidiary of USA Waste, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. ''United'' means defendant United Waste Systems, Inc., a Delaware corporation with its headquarters in Greenwich, Connecticut, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. ''Allegheny County'' refers to Allegheny County, Pennsylvania.

E. ''Kelly Run Sanitation'' means Kelly Run Sanitation, Inc., which is a wholly owned subsidiary of United, and all assets excluding the Hauling Business, including:

1. All tangible assets, including all fee and all leasehold and renewal rights in a landfill located at Road #3, Route 51, Elizabeth, Pennsylvania 15037 (known as Kelly Run Landfill); the garage and related facilities; offices; and landfill-related assets including capital equipment, trucks and other vehicles, scales, power supply equipment, interests, permits, and supplies; and

2. All intangible assets, including landfill-related customer lists, contracts, and accounts.

F. ''Hauling Business'' means the Kelly Run Sanitation hauling-related assets, including:

1. All tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, supplies, and related facilities, except the garage and related facilities, located at Road #3, Route 51, Elizabeth, PA 15037; and

2. All intangible assets, including hauling-related customer lists, contracts, and accounts.

G. ''Hauling'' means the collection of nonhazardous solid waste from customers and the transporting of the collected waste to disposal sites.

H. ''Waste'' means nonhazardous solid waste.

I. ''Disposal'' means the business of disposing of nonhazardous solid waste into Pennsylvania Department of Environmental Protection approved disposal sites.

**III**

*Applicability*

A. The provisions of this Final Judgment apply to USA Waste, its successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. USA Waste shall require, as a condition of the sale or other disposition of all or substantially all of the assets that comprise Kelly Run Sanitation, that the transferee agrees to be bound by the provisions of this Final Judgment.

**IV**

*Divestiture*

A. USA Waste is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest Kelly Run Sanitation as an ongoing business to a purchaser acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Pennsylvania.

B. USA Waste shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible. The United States, in its sole determination after consultation with the Commonwealth of Pennsylvania, may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestiture ordered by this Final Judgment. USA Waste promptly shall make known, by usual and customary means, the availability of Kelly Run Sanitation. USA Waste shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. USA Waste shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding Kelly Run Sanitation customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. USA Waste shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

D. USA Waste shall not interfere with any negotiations by any purchaser to employ any USA Waste (or former United) employee who works at, or whose principal responsibility is the waste disposal business concerning Kelly Run Sanitation.

E. USA Waste shall permit prospective purchasers of Kelly Run Sanitation to have access to personnel and to make such inspection of Kelly Run Sanitation; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. USA Waste shall warrant to the purchaser of Kelly Run Sanitation that Kelly Run Sanitation will be operational on the date of sale.

G. USA Waste shall not take any action, direct or indirect, that will impede in any way the operation of Kelly Run Sanitation.

H. USA Waste shall warrant to the purchaser of Kelly Run Sanitation that there are no material defects in the environment, zoning, or other permits pertaining to the operation of Kelly Run Sanitation and that USA Waste will not undertake, directly or indirectly, following the divestiture of Kelly Run Sanitation, any challenges to the environment, zoning, or other permits pertaining to the operation of Kelly Run Sanitation.

I. At the option of the purchaser, USA Waste will enter into an agreement with the purchaser, at commercially available reasonable terms and conditions, guaranteeing a flow of waste into the Kelly Run Landfill for the purpose of maintaining Kelly Run Sanitation as a viable, ongoing waste disposal business and preserving competition in the disposal and hauling businesses in Allegheny County.

J. USA Waste shall not be permitted to locate any of its operations at Kelly Run Sanitation.

K. Unless the United States, after consultation with the Commonwealth of Pennsylvania, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include Kelly Run Sanitation and be accomplished by selling or otherwise conveying the Kelly Run Sanitation to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Pennsylvania, that Kelly Run Sanitation can and will be used by the purchaser as part of a viable, ongoing business or businesses, engaged in the waste disposal business in Allegheny County. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the United States' sole satisfaction, after consultation with the Commonwealth of Pennsylvania: (1) Has the capability and intent of competing effectively in the waste disposal business in Allegheny County; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the waste disposal business in Allegheny County; and (3) none of the terms of any agreement between the purchaser and USA Waste gives USA Waste the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in Allegheny County.

**V**

*Appointment of Trustee*

A. In the event that USA Waste has not divested Kelly Run Sanitation within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of Kelly Run Sanitation.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell Kelly Run Sanitation described in Section II(E) of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested the Hauling Business: in such event, all of the obligations of USA Waste under Section IV of this Final Judgment shall apply to the Hauling Business as well. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of USA Waste any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, upon consultation with the Commonwealth of Pennsylvania, and shall have such other powers as this Court shall deem appropriate. USA Waste shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by USA Waste must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of USA Waste, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of Kelly Run Sanitation sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to USA Waste and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. USA Waste shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and USA Waste shall develop financial or other information relevant to the business to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. USA Waste shall permit bona fide prospective acquirers of Kelly Run Sanitation to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the business to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

**VI**

*Notification*

Within two (2) business days following execution of a definitive agreement contingent upon compliance with the terms of this Final Judgment to effect, in whole or in part, any proposed divestiture pursuant to Sections IV of V of this Final Judgment, USA Waste or

the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify USA Waste. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, the United States, in its sole discretion, after consultation with the Commonwealth of Pennsylvania, may request from USA Waste, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. USA Waste and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the plaintiffs have been provided the additional information requested from USA Waste, the proposed purchaser, and any third party, whichever is later, the United States, after consultation with the Commonwealth of Pennsylvania, shall provide written notice to USA Waste and the trustee, if there is one, stating whether or not it objects to the propose divestiture. If the United States provides written notice to USA Waste and the trustee that it does not object, then the divestiture may be consummated, subject only to USA Waste's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by USA Waste under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

**VII**

*Affidavits*

A. Within twenty (20) calendar days of the filing of the Final Judgment in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV of Section V of this Final Judgment, USA Waste shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Section IV of Section V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contact or made an inquiry about acquiring, any interest in the business to be divested, and shall described in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that USA Waste has taken to solicit a buyer for Kelly Run Sanitation and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States after the consultation with the Commonwealth of Pennsylvania to information provided by USA Waste including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter USA Waste shall deliver to plaintiffs and affidavit which describes in detail all actions USA Waste has taken and all steps USA Waste has implemented on an on-going basis to preserve Kelly Run Sanitation and the Hauling Business pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, USA Waste's efforts to maintain and operate Kelly Run Sanitation and the Hauling Business as an active competitor, maintain the management, staffing, sales, marketing and pricing of Kelly Run Sanitation and Hauling Business, and maintain the Kelly Run Landfill in operable condition at current capacity configurations. USA Waste shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in USA Waste's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, USA Waste shall preserve all records of all efforts made to preserve the business to be divested and effect the divestiture.

*Hold Separate Order*

Until the divestitures required by the Final Judgment have been accomplished. USA Waste shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of Kelly Run Sanitation.

**IX**

*Financing*

USA Waste is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment without prior written consent of the United States, in it sole discretion, after consultation with the Commonwealth of Pennsylvania.

**X**

*Compliance Inspection*

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon written request of duly authorized representatives of the Attorney General's Office of the Commonwealth of Pennsylvania, and on reasonable notice to USA Waste made to its principal offices, shall be permitted:

1. Access during office hours of USA Waste to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of USA Waste, who may have counsel present, relating to the matters contained in this Final judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of USA Waste and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon the written request of the Attorney General's Office of the Commonwealth of Pennsylvania. USA Waste shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or the Attorney General's Office of the Commonwealth of Pennsylvania, except

in the course of legal proceedings to which the United States or the Commonwealth of Pennsylvania is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by USA Waste to plaintiffs, USA Waste represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and USA Waste marks each pertinent page of such material. ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure.'' then ten (10) calendar days notice shall be given by plaintiffs to USA Waste prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which USA Waste is not a party.

**XI**

*Retention of Jurisdiction*

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

**XII**

*Termination*

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

**XIII**

*Public Interest*

Entry of this Final Judgment is in the public interest.

Dated _____, 1997.

_____

United States District Judge

**United States District Court, Western District of Pennsylvania, Pittsburgh Division**

United States of America, and Commonwealth of Pennsylvania, Plaintiffs, versus USA Waste Services, Inc., Riviera Acquisition Corporation, and United Waste Systems, Inc., Defendants. Civil No: 97–1524. Filed: 8/22/97, Judge Ambrose.

**Competitive Impact Statement**

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil proceeding.

**I**

*Nature and Purpose of the Proceeding*

On August 22, 1997, the United States filed a civil antitrust Complaint which alleges that the proposed acquisition of the voting stock of United Waste Systems, Inc. (''United'') by USA Waste Services, Inc. (''USA Waste'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the combination of these two significant competitors would substantially lessen competition in providing disposal services to haulers of municipal solid waste (''MSW'') generated in Allegheny County, Pennsylvania. MSW means garbage, refuse, industrial lunchroom and office waste and other materials generated by residential, municipal, commercial or industrial establishments. It does not include special hauling waste or construction demolition debris. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing USA Waste from acquiring control of United.

When the Complaint was filed, the United States also filed a proposed settlement that would permit USA Waste to complete its acquisition of United but requires a divestiture that will preserve competition in the Allegheny County market. This settlement consists of a Stipulation and Order, a Hold Separate Stipulation and Order, and a proposed Final Judgment.

The proposed Final Judgment orders USA Waste to divest Kelly Run Sanitation, Inc. (''Kelly Run Sanitation'') which is located in Pittsburgh, Pennsylvania. Kelly Run Sanitation is a subsidiary of United and owns the Kelly Run Landfill. The proposed Final Judgment excludes the hauling-related Kelly Run Sanitation assets from divestiture. At the option of the purchaser of Kelly Run Sanitation, USA Waste will enter into an agreement with the purchaser, containing reasonable terms and conditions, guaranteeing a flow of waste into the Kelly Run Landfill for the purpose of maintaining Kelly Run Sanitation as a viable ongoing waste disposal business.

The Stipulation and Order, Hold Separate Stipulation and Order, and proposed Final Judgment require USA Waste to ensure that, until the divestitures mandated by the proposed Final Judgment have been accomplished, Kelly Run Sanitation will be maintained and operated as an independent, ongoing, economically viable and active competitor. USA Waste must preserve and maintain Kelly Run Sanitation as a saleable, ongoing concern, with competitively sensitive business information and decision-making divorced from that of USA Waste. USA Waste will appoint a person or persons to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

**II**

*Description of the Events Giving Rise to the Alleged Violation*

USA Waste is a Delaware corporation with its principal office in Houston, Texas. USA Waste is engaged in providing nonhazardous solid waste hauling and/or disposal services in 36 states in the United States; Washington, D.C., and Puerto Rico. In 1996, USA Waste had total revenues of approximately $1.3 billion.

United is a Delaware corporation with its principal office in Greenwich, Connecticut. United is engaged in providing nonhazardous solid waste hauling and/or disposal services in 23 states in the United States. In 1996, United had total revenues of approximately $335,743,000.

Rivera is a Delaware corporation. It is a wholly owned subsidiary of USA Waste. USA Waste, Riviera, and United entered into an Agreement and Plan of Merger on April 13, 1997 through which Riviera will be merged with United and United's common stock will be converted into USA Waste common stock. As a result of the Agreement and Plan of Merger, USA Waste will hold 100 percent of the voting securities of United. This transaction, which would take place in a highly concentrated Allegheny County, Pennsylvania MSW disposal market, precipitated the government's suit.

A. The Transaction's Effects in the Allegheny County, Pennsylvania Market

The Complaint alleges that MSW disposal services constitutes a line of commerce, or relevant product market, for antitrust purposes, and that Allegheny County constitutes an appropriate section of the country, or relevant geographic market. The Complaint alleges the effect of USA Waste's acquisition may be to substantially lessen competition in providing disposal services to haulers of MSW generated in Allegheny County.

Disposal of MSW in the Commonwealth of Pennsylvania is regulated and the requirements imposed by Pennsylvania law limit the means by which MSW can properly be disposed. The Pennsylvania Solid Waste Management Act (''Solid Waste Act''), 35 P.S. 6018.101 *et seq.*, is intended to protect the public by setting forth requirements for the proposed disposal of solid waste in the Commonwealth of Pennsylvania. The statute authorizes the Pennsylvania Department of Environmental Protection to oversee the storage, collection, transportation, processing, treatment and disposal of non-hazardous solid waste through, among other things, a comprehensive system of permits and regulations governing Pennsylvania landfills. MSW regulated by the Solid Waste Act include garbage, refuse, industrial lunchroom and office waste, and other materials generated by residential, municipal, commercial or institutional establishments.

In Pennsylvania, MSW is a separate and distinct waste product. The statutes and regulations of the Commonwealth of Pennsylvania which regulate MSW and the physical characteristics of MSW result in MSW being stored, handled, hauled, and disposed of differently from other types of waste.

MSW haulers use landfills to dispose of waste. Access to landfills at competitive prices where a hauler is operating (e.g. Allegheny County) is essential to hauling companies. Disposal costs account for approximately 30 to 40 percent of the amount a hauler charges for collection services. A large amount of MSW is generated in Allegheny County and the defendants' landfills are the recipients of a very large percentage of the MSW generated in Allegheny County.

MSW generated in Allegheny County is generally transported by collection trucks to landfills, and the availability of landfills close to a hauler's MSW routes is a major element that determines a hauler's competitiveness and profitability. In addition, MSW haulers must achieve route density (a large number of customers that are located close together in a small geographic area) for them to be profitable. As a result, local haulers generally establish MSW routes, utilize landfills, and establish garages and related facilities in a local geographic area.

Due to the high costs of transporting MSW, and the substantial travel time to other landfills based on distance, natural barriers and congested roadways, haulers of MSW generated in Allegheny County are limited to landfills located in Allegheny County and in central Washington County, western Westmoreland County and Butler County, (hereinafter the ''greater Pittsburgh area''). Virtually all of the MSW generated in Allegheny County is disposed of exclusively in landfills in the greater Pittsburgh area. In addition, landfills in the greater Pittsburgh area price discriminate—in other words, they charge higher prices to haulers of MSW generated in Allegheny County than they charge to other haulers outside of Allegheny County where more MSW disposal facilities are available to them. In the event of a small but significant and non-transitory price increase by landfills in the greater Pittsburgh area, haulers of MSW generated in Allegheny County would not turn to disposal facilities outside the greater Pittsburgh area.

USA Waste and United compete with each other and with other companies to provide disposal for MSW generated in Allegheny County. USA Waste and United are the first and third largest disposers of MSW generated in Allegheny County. USA Waste, Browning Ferris Industries (''BFI''), and United dispose of more than 90 percent of the MSW generated in Allegheny County at their landfills. During 1996, based on Allegheny County MSW disposal data, USA Waste accounted for 51.3 percent of the market and United accounted for 8.2 percent. The acquisition would give USA Waste almost 60 percent of the market (59.5 percent) and two firms would control over 90 percent of the MSW disposal market for MSW generated in Allegheny County. The post-merger HHI based on the amount of municipal waste from Allegheny County disposed in 1996 would be approximately 4600, an increase of about 840 over the pre-acquisition HHI. Alternatively, the post merger HHI, based on the daily capacity available for MSW generated in Allegheny County, would be approximately 3480 with a change of about 590.

The substantial increase in concentration in the market for disposal of MSW generated in Allegheny County caused by the acquisition by USA Waste of United's Kelly Run Landfill would likely understate the impact of the acquisition on competition. Downtown Pittsburgh and other heavily populated areas of Allegheny County are located on the southern side of the Ohio and Allegheny Rivers. Travel from north to south in the county is time-consuming because of the need to use bridges and tunnels. These physical constraints on travel result in three firms, USA Waste, United and BFI, having substantial locational advantages in serving Pittsburgh and its close-in suburbs. After the acquisition, USA Waste will control four of the five landfills that are within 20 miles of downtown Pittsburgh and in the area of highest population in Allegheny County. More distant landfills in the greater Pittsburgh area, such as those located in Butler County, would not be realistic competitive alternatives south of the Allegheny and Ohio Rivers in the event of a small but significant and non-transitory price increase by landfills in that area.

USA Waste is also engaged in the collection and hauling of MSW in Allegheny County. Because USA Waste will control four of the five landfills that are within 20 miles of downtown Pittsburgh and the area of highest population in Allegheny County. USA Waste will be able to raise landfill rates to haulers competing against them for MSW collection in many of the highest populated areas of Allegheny County. In outlying areas of Allegheny County where alternative landfill operation may exist, USA Waste can charge lower prices to haulers (price discriminate) to retain their business. Because disposal costs range from approximately 30 percent to 40 percent of a hauler's revenue, USA Waste's ability to raise the competitions' hauling prices in many of the most populated areas of Allegheny County will quickly make those haulers uncompetitive.

Entry by a new landfill would not be timely, likely or sufficient to prevent substantial harm to competition. Opening a new landfill in the greater Pittsburgh area is considered to be difficult, time consuming, and costly. Commonwealth of Pennsylvania Executive Order 1996–5, Municipal Waste Facilities Review program, August 29, 1996, makes it difficult if not impossible to obtain a landfill permit. Local opposition to a new landfill would be considerable. In addition, it would be extremely difficult to obtain the necessary land and building the landfill would be very costly. A new

landfill built in the greater Pittsburgh area to serve Allegheny County is not expected in the next 10 years. Similarly, it is very difficult and possibly unlikely that a transfer station permit could be obtained to serve the populated areas of Allegheny County. Executive Order 1996–5 and opposition from local citizens would make it unlikely.

B. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: competition in providing disposal services to haulers of MSW generated in Allegheny County will be substantially lessened; actual and potential competition between USA Waste and United in providing disposal services to haulers of MSW generated in Allegheny County will be eliminated; and prices for disposal services to haulers of MSW generated in Allegheny County are likely to increase above competitive levels.

**III**

*Explanation of the Proposed Final Judgment*

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in the market for the disposal of MSW generated in Allegheny County by establishing a new, independent and economically viable competitor in that market. The proposed Final Judgment requires USA Waste and United, within 120 days after the filing of the Complaint in this matter, or five days after notice of entry of this Final Judgment by the Court, whichever is later, to divest, as a viable ongoing business, Kelly Run Sanitation and related assets, but excludes the Kelly Run Sanitation hauling-related assets. The divestiture would include, among other assets, the Kelly Run Landfill, the garage and office, trucks and vehicles, scales, permits, and intangible assets such as landfill customer contracts. In addition, the proposed Final Judgment intends to eliminate the anticompetitive effects of the acquisition by providing that, at the option of the purchaser, USA Waste will enter into an agreement with the purchaser, containing reasonable terms and conditions, guaranteeing a flow of waste into the Kelly Run Landfill. Such a waste flow agreement would help assure the viability of the purchaser.

If USA Waste and United cannot accomplish this divestiture within the above-described period, the Final Judgment provides that, upon application (after consultation with the Commonwealth of Pennsylvania) by the United States as plaintiff, the Court will appoint a trustee to effect divestiture. The trustee has the power to include with Kelly Run Sanitation the Kelly Run Sanitation hauling-related assets to make Kelly Run Sanitation saleable.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the Commonwealth of Pennsylvania) that the operation can and will be operated by the purchaser or purchasers as a viable, ongoing business that can compete effectively in the relevant market. The defendants must take all reasonable steps necessary to accomplish the divestiture, and shall cooperate with bona fide prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that USA Waste will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustees efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

**IV**

*Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendant.

**V**

*Procedures Available for Modification of the Proposed Final Judgment*

The United States defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States and has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.** Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

**VI**

*Alternatives to the Proposed Final Judgment*

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants USA Waste and United. The United States could have brought suit and sought preliminary and permanent injunctions against USA Waste's acquisition of the voting stock of United. The United States is satisfied, however, that the divestiture of the described assets outlined in the proposed Final Judgment will encourage viable competitors in the market identified by the United States as requiring the relief implemented. The United States is satisfied that the proposed relief will prevent the

acquisition from having anticompetitive effects in this market. The divestiture will restore the market to the structure that existed prior to the acquisition, and will preserve the existence of independent competitors in this area.

## VII

*Standard of Review Under the APPA for Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather.

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should

* * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); see also, *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).'' [3]

## VIII

*Determinative Documents*

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America:

Frederick H. Parmenter

Arthur A. Feiveson

Stephen F. Sonnett

Viqar M. Shariff

Attorneys, U.S. Department of Justice, Antitrust Division, 1401 H St., N.W., Washington, D.C. 20530 (202) 307–0620.

**Certification of Service**

I hereby certify that a copy of the foregoing has been served upon USA Waste Services, Inc., United Waste Systems, Inc., and the Office of the Attorney General of the Commonwealth of Pennsylvania, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the addresses given below, this _____ day of August, 1997.

USA Waste Services, Inc.: c/o James R. Weiss, Preston, Gates, Ellis & Rouvelas Meeds, Suite 500, 1735 New York Ave., NW, Washington, D.C. 20006–5209

United Waste Systems, Inc.: c/o Ilene Knable Gotts, Wachtell, Lipton, Rosen & Katz, 51 West 52d Street, New York, NY 10019–6150

Commonwealth of Pennsylvania: James A. Donahue, III, Chief Deputy Attorney General, Antitrust Section, 14th Floor, Strawberry Square, Harrisburg, PA 17120

Fredrick H. Parmenter,

*Attorney, U.S. Department of Justice, Antitrust Division, 1401 H. Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0620.*

[FR Doc. 97–23869 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–11–M

[1] 119 Cong. Rec. 24598 (1973). *See, United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D.Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See*, H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d at 565.

[3] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) *quoting United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on July 24, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Advanced Lead-Acid Battery Consortium (''ALABC''), a program of International Lead Zinc Research Organization, Inc., filed written notification simultaneously with

the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Southern California Edison, Rosemead, CA and Johnson Controls, Milwaukee, WI have made commitments to the Consortium.

No other changes have been made in either the membership or planned activity of the Consortium. Membership in the Consortium remains open and ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33522). The last notification was filed with the Department on April 28, 1997. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 22, 1997 (62 FR 28065).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 97–23870 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Asymmetrical Digital Subscriber Line Forum

Notice is hereby given that, on May 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Asymmetrical Digital Subscriber Line Forum (''ADSL'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have joined ADSL: ELSA GmbH, Aachen, Germany; EPL Ltd., Bradford on Avon, Wiltshire, England; Hayes Microcomputer Products, Inc., Atlanta, GA; Microsoft Corporation, Redmond, WA; Mitsubishi Electric Information Technology America, Somerset, NJ; Redback Networks, Inc., San Jose, CA: SGS Thomson Microelectronics, St. Genispouilly, France; ATM Ltd., Santa Clara, CA; Efficient Networks, Dallas, TX; Netspeed, Inc., Dallas, TX; Nortel, Harlow, Essex, United Kingdom; NYNEX S&T, Boston, MA; and Siemens Stromberg-Carlson, Lake Mary, FL.

Copper Mountain has changed its name to Copper Mountain Network; and GTE Telephone Operations has changed its name to GTE Corporation.

CSELT; DTI; Harris Semiconductor; Independent Editions; NET; SAT; Telia; Telstra; and Vertel have cancelled their membership in ADSL.

No other changes have been made in the membership, nature or objectives of ADSL. Membership remains open, and ADSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, ADSL filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 1995 (60 Fed. Reg. 38058).

The last notification was filed with the Department on November 5, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 15938).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 97–23874 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Corporation for National Research Initiatives—Cross Industry Working Team Project

Notice is hereby given that, on June 9, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Corporation for National Research Initiatives (''CNRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of the Cross Industry Working Team Project (''XIWT''). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional party has become a Primary Member of XIWT: Alcatel Telecom, Richardson, TX. The following additional parties have become Associate Members of XIWT: EarthLink Network, Inc., Pasadena, CA; and Science Applications International Corporation, Vienna, VA. The following Associate Members have discontinued membership in XIWT: Bay Networks; DynCorp; and Xerox Corporation.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CNRI intends to file additional written notifications disclosing all changes in membership. On September 28, 1993, CNRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 17, 1993 (56 FR 66022). The last notification was filed with the Department on October 29, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 14, 1997 (62 FR 26569).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 97–23872 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum

Notice is hereby given that, on June 24, 1997, pursaunt to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (''GURG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances. Specifically, Statoil, Stavanger, NORWAY, has become a new member of GURF.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and GURF intends to file additional written notification disclosing all changes in membership. Information regarding membership in GURF may be obtained from the Secretary, Dennis Winegar, Manager, Technical Services & Project

Development, Texaco Natural Gas International, P.O. Box 4700, Houston, TX, 77210–4700, Telephone (713) 752–7654, Facsimile: (713) 752–4681.

On December 19, 1990, GURF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 16, 1991, (56 FR 1655).

The last notification was filed with the Department on January 18, 1994. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 10, 1994, (59 FR 11310).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 97–23873 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. (NCMS)

Notice is hereby given that, on July 8, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies were accepted as active members of NCMS: CAMotion, Inc., Atlanta, GA; Plynetics Express, Inc., Auburn Hills, MI; Primavera Systems, Inc., Bala Cynwyd, PA; Soft Select Systems, LLC, Vancouver, WA; Tubal Cain Company, Loveland, OH and Universal Flow Monitors, Inc., Hazel Park, MI. Michigan Virtual Automotive College, Ann Arbor, MI, was approved for affiliate membership. The following companies have resigned from active membership in NCMS: View Engineering, Inc., Simi Valley, CA, and XFER International, Inc., Ann Arbor, MI. Organizations which have recently resigned from affiliate membership are: Electronics Manufacturing Productivity Facility (EMPF), Indianapolis, IN and Wayne State University, Detroit, MI.

No other changes have been made in either the membership or planned actvitity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on March 3, 1997. This notice was published in the **Federal Register** on April 29, 1997 (62 FR 23268).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 97–23876 Filed 9–8–97; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Electronics Manufacturing Initiative

Notice is hereby given that, on June 25, 1997, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Electronics Manufacturing Initiative (''NEMI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are as follows: Center for Innovative Technology (CIT), Herndon, VA; Eastman Kodak Company, Rochester, NY; EDS, Kokomo, IN; Electronic Industries Association (EIA), Arlington, VA; Electronic Scientific Industries, Inc., Portland, OR: GenRad, Inc., Westford, MA; IBM Corporation, Hopewell Junction, NY; IEEC, SUNY-Binghamton, Binghamton, NY; Intel Corporation, Hillsboro, OR; Plexus Corporation, Neenah, WI. The following member has changed its name: Eveready Battery Co. to Energizer.

On June 6, 1996, NEMI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 1996 (61 FR 33774). The last notification was filed on September 30, 1996 and a notice was published in the **Federal Register** on November 5, 1996 (61 FR 56971).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 97–23875 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation (''POSC'')

Notice is hereby given that, on July 23, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petrotechnical Open Software Corporation (''POSC'') has filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new non-voting members of POSC: Mathtech International, Inc., Falls Church, VA and Petris Technology, Inc., Houston, TX.

No other changes have been made in either the membership or the planned activities of POSC.

On January 14, 1991, POSC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on April 22, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) on May 19, 1997 (62 FR 27278).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 97–23871 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 1870–97]**

### Announcement of Membership of District Advisory Council on Immigration Matters and First Meeting

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** The Immigration and Naturalization Service (Service) has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Immigration and Naturalization Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices (see the notice published elsewhere in this issue of the **Federal Register** which establishes the DACOIM). The purpose of this notice is to announce the membership of the DACOIM, as well as the date and agenda for a forthcoming meeting.

**DATES AND TIMES:** The first meeting of the DACOIM is scheduled for September 25, 1997 at 10:00 A.M.

**ADDRESSES:** The meeting will be held at the United States Court of International Trade, I Federal Plaza, 2nd Floor, Ceremonial Court Room, New York, New York 10278.

**FOR FURTHER INFORMATION CONTACT:** Hiwatha Greene-Janvier, Community Relations Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278. Telephone: (212) 264–0736.

**SUPPLEMENTARY INFORMATION:**

## Authority

The DACOIM is established in accordance with the Federal Advisory Committee Act [5 U.S.C. App. 2] and 41 CFR 101–6.1001–101–6.1035. The charter for the DACOIM has been filed with Congress.

## Purpose

The Service's New York District established a District Advisory Council For Immigration Matters (DACOIM) for the purpose of providing recommendations to the New York District Director to improve the response and reaction to customers and increase cooperative opportunities relating to immigration and naturalization concerns in the local jurisdiction. Most importantly, the DACOIM will help to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The DACOIM is authorized by the District Director in concurrence with the Commissioner and Attorney General to: (a) Assess New York District policies and procedures that impact customer service; (b) analyze and recommend improvements as needed; (c) serve as a community base for anchoring outreach activities and education; and (d) establish mechanisms to assess tension and control rumors.

## Membership

In accordance with the Federal Advisory Committee Act, the Charter for the District Advisory Council on Immigration Matters was filed with Congress, and the District Director has approved the following members to serve on the DACOIM:

## Private Citizen Members

The nine private citizen members who represent organizations which reflect balanced perspectives and interests regarding immigration and naturalization matters are:

(1) Richard Lay, Board of Directors, Literacy Volunteers of America, Middletown, New York
(2) Rolando Martinez, Executive Director, Economic Opportunity Commission of Nassau County Inc. (EEOC), Hempstead, New York
(3) Sarah Vidal, Deputy Commissioner, New York City Human Rights Commission, Manhattan, New York
(4) Marianne DiPalermo-McCauley, Psychologist, Educator, Westchester County, New York
(5) David Chen, Director, Chinese American Planning Council, Manhattan, New York
(6) Horace Morancie, Board of Directors, Caribbean Research Center, Brooklyn, New York
(7) Helene Lauffer, Director, Travelers Aid (Immigration Hotline), Queens County, New York
(8) Arturo Sanchez, Board of Directors, Colombian Charities of America, Queens County, New York, and
(9) Cassandra Griffen-McIntyre, Commissioner, Rockland County Commission on Human Rights, New City, New York.

## Government Members

The six representatives from the Department of Justice, Immigration and Naturalization Service, New York District, are:

(1) Charles Troy, Assistant District Director, Management
(2) Mark Curley, Deputy District Counsel
(3) Sham Chin Gee, Supervisory Adjudications Officer
(4) Richard Pileggi, Deputy Area Port Director
(5) Bart Rodriquez, Supervisory Special Agent, and
(6) Theresa Regis, Officer-in-Charge, Wackenhut Detention factility.

## Other Members

The two non-voting members, a Foreign Consulate Representative and a Commissioner Designee, will be announced shortly.

## Summary of Agenda

As this is the first meeting of the DACOIM, the principal purposes of the meeting will be to introduce the members to each other and to discuss future activities of the DACOIM. There will also be an overview of the Service and a general orientation to include the current customer benefit process. The DACOIM will be chaired by Charles Troy, Assistant District Director for Management, New York District, Immigration and Naturalization Service.

## Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting for consideration by the DACOIM. Written statements should be sent to Hiwatha Greene-Janvier, Community Relations Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278. Telephone: (212) 264–0736. Only written statements received at least five (5) days prior to the meeting will be considered for discussion at the meeting. Minutes of the meeting will be available on request.

Dated: September 4, 1997.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 97–23959 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–10–M

---

# DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

**[INS No. 1866–97]**

## New York District Advisory Council on Immigration Matters

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice establishes a District Advisory Council on Immigration Matters (DACOIM) to provide recommendations to the New York District Director on ways to improve the response and reaction to customers in the local jurisdiction. The

DACOIM will also seek to increase cooperative opportunities by serving as a community base for anchoring outreach activities and education, in order to strengthen the relationship between the Service and all members of the community.

**FOR FURTHER INFORMATION CONTACT:** Hiwatha Greene-Janvier, Community Relations Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278. Telephone: (212) 264–0736.

**SUPPLEMENTARY INFORMATION:**

### Authority

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2 (1972), and 41 CFR 101–6.1001–6.1035 (1992), the DACOIM is established with the concurrence of the Commissioner, Immigration and Naturalization Service, and the Attorney General.

### Background

The establishment of the DACOIM is in response to an increase in the overall immigrant population of all fourteen counties in the New York District. The mass settlement of new immigrants seeking Service benefits is immersed into an existing atmosphere of misconceptions and mistrust, which has caused an increase in tension between the immigrant and non-immigrant communities. Establishment of this advisory council is intended to eliminate any misconceptions and mistrust while trying to build and maintain a good relationship with all members of the community. The DACOIM will also serve to enhance public confidence in immigration policy and procedures and demonstrate the Service's commitment to strengthen the New York District's response time to immigration matters and enhance communications with all sources.

### Purpose

The DACOIM is authorized by the Attorney General to (1) assess New York District policies and procedures that impact customer service, (2) analyze and recommend improvements as needed, (3) serve as a community base for anchoring outreach activities and education, and (4) establish mechanisms to assess tension and control rumors.

### Membership

The DACOIM will be composed of fifteen voting members who will be appointed by the District Director. Six of these members shall be representatives from the Department of Justice, Immigration and Naturalization Service, New York District. The remaining nine members shall be private citizens representing organizations who reflect balanced perspectives and interests regarding immigration and naturalization matters and community relations. In addition, the DACOIM will be comprised of two non-voting members, as follows: a Consular or Embassy official, representing the Society of Foreign Consuls, who will serve in a permanent advisory capacity to the DACOIM, and a representative designated by the Commissioner, Immigration and Naturalization Service. This composition will attain a balanced membership.

The DACOIM will function solely as an advisory body in compliance with the provision of the Federal Advisory Committee Act. Its charter has been filed and approved, in accordance with the provisions of the Act.

Dated: September 4, 1997.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 97–23960 Filed 9–9–97; 8:45 am]

BILLING CODE 4410–10–M

---

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

September 4, 1997.

*Time and Date:* 10:00 a.m., Thursday, September 11, 1997.

*Place:* Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

*Status:* Open.

*Matters To Be Considered:* The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Cyprus Cumberland Resources Corp.*, Docket No. PENN 95–75 (Issues include whether the judge erred in determining that a safeguard was validly issued to address the alleged failure of the operator to consistently turn off track haulage signal lights when leaving blocks of track and that the operator violated the safeguard).

*Time and Date:* 2:00 p.m., Thursday, September 11, 1997.

*Place:* Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

*Status:* Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

*Matters To Be Considered:* It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* v. *Cyprus Cumberland Resources Corp.*, Docket No. PENN 95–75 (See oral argument listing, supra, for issues).

*Time and Date:* 3:00 p.m., Thursday, September 11, 1997.

*Place:* Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

*Status:* Open.

*Matters To Be Considered:* The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Island Creek Coal Co.*, Docket No. KENT 95–214 (Issues include whether the judge erred in concluding that the operator did not violate 30 CFR 50.10, requiring the immediate reporting of accidents to the Mine Safety and Health Administration, on the basis that the escape of methane from a cut-through core drill hole did not constitute an ''unplanned inundation of a mine'' within the meaning of 30 CFR 50.2(h)(4)).

*Time and Date:* 10:00 a.m., Wednesday, September 17, 1997.

*Place:* Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

*Status:* Open.

*Matters To Be Considered:* The Commission shall consider and act upon the following:

1. *Secretary of Labor* v. *Cyprus Emerald Resources Corp.*, Docket Nos. PENN 94–23 and 94–166 (Issues include whether the placement of coal refuse by the operator was a ''refuse pile'' under 30 CFR 75.214 (f) and (h) and whether the accident-reporting and investigating standards in 30 CFR 50.10 and 50.11 were triggered by a collapse of the coal refuse, whether the operator violated 30 CFR 77.1608, requiring trucks to a dump a safe distance from the edge of the bank when on unstable ground, and whether certain of the violations were significant and substantial and the result of the operator's unwarrantable failure to comply with the standard).

*Time and Date:* 10:00 a.m., Thursday, September 25, 1997.

*Place:* Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

*Status:* Open.

*Matters To Be Considered:* The Commission will consider and act upon the following:

1. Whether to propose revisions to Commission Procedural Rules 10, 45(f), 70, and 75.

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653–5629/(202) 708–

9300 for TDD Relay/1–800–877–8339 for toll free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 97–24084 Filed 9–5–97; 4:59 pm]

BILLING CODE 6735–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (97–133)]**

### Agency Information Collection: Submission for OMB Review, Comment Request

**AGENCY:** National Aeronautics and Space Administration (NASA).

**SUMMARY:** The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this proposal should be received on or before October 10, 1997.

**ADDRESSES:** All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

*Title:* NASA acquisition process, bids and proposals for contracts with an estimated value less than $500,000.

*OMB Number: 2700–0087.*

*Type of Review:* Extension.

*Need and Uses:* Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission.

*Affected Public:* Business or other not-for-profit institutions.

*Estimated Number of Respondents:* 15,317.

*Responses Per Respondent:* 1.

*Estimated Annual Responses:* 15,317.

*Estimated Hours Per Request:* 200.

*Estimated Annual Burden Hours:* 3,361,160.

*Frequency of Report:* On occasion.

**Donald J. Andreotta,**

*Deputy Chief Information Officer (Operations), Office of the Administrator.*

[FR Doc. 97–23987 Filed 9–9–97; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (97–134)]**

### Agency Information Collection: Submission for OMB Review, Comment Request

**AGENCY:** National Aeronautics and Space Administration (NASA).

**SUMMARY:** The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this proposal should be received on or before October 10, 1997.

**ADDRESSES:** All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

*Title:* NASA acquisition process, reports required for contracts with an estimated value more than $500,000.

*OMB Number:* 2700–0089.

*Type of Review:* Extension.

*Need and Uses:* Information collection is required to effectively manage and administer contracts that furnish goods and services in support of NASA's mission.

*Affected Public:* Business or other for-profit, not-for-profit institutions.

*Estimated Number of Respondents:* 176.

*Responses Per Respondent:* 60.

*Estimated Annual Responses:* 10,560.

*Estimated Hours Per Request:* 30.

*Estimated Annual Burden Hours:* 316,800.

*Frequency of Report:* On occasion.

**Donald J. Andreotta,**

*Deputy Chief Information Officer (Operations), Office of the Administrator.*

[FR Doc. 97–23988 Filed 9–9–97; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (97–135)]**

### Agency Information Collection: Submission for OMB Review, Comment Request

**AGENCY:** National Aeronautics and Space Administration (NASA).

**SUMMARY:** The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this proposal should be received on or before October 10, 1997.

**ADDRESSES:** All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

*Title:* NASA simplified acquisition for goods and services with a value of $100,000 or less.

*OMB Number:* 2700–0086.

*Type of Review:* Extension.

*Need and Uses:* Information collection is required to evaluate bids and proposals from offerors in order to award purchase orders and to use bank cards for required goods and services in support of NASA's mission.

*Affected Public:* Business or other for-profit, not-for-profit institutions.

*Estimated Number of Respondents:* 177,013.

*Responses Per Respondent:* 2.

*Estimated Annual Responses:* 216,265.

*Estimated Hours Per Request:* 30 min.

*Estimated Annual Burden Hours:* 108,132.

*Frequency of Report:* On occasion.

**Donald J. Andreotta,**

*Deputy Chief Information Officer (Operations), Office of the Administrator.*

[FR Doc. 97–23989 Filed 9–9–97; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (97–136)]**

### Agency Information Collection: Submission for OMB Review, Comment Request

**AGENCY:** National Aeronautics and Space Administration (NASA).

**SUMMARY:** The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this proposal should be received on or before October 10, 1997.

**ADDRESSES:** All comments should be addressed to Mr. Richard Kall, Code HK

National Aeronautics and Space Administration, Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

*Title:* NASA acquisition process, bids and proposals for contracts with an estimated value more than $500,000.

*OMB Number:* 2700–0085.

*Type of Review:* Extension.

*Need and Uses:* Information collection is required to evaluate bids and proposals from offerors in order to award contracts for required goods and services in support of NASA's mission.

*Affected Public:* Business or other for-profit, not-for-profit institutions.

*Estimated Number of Respondents:* 590.

*Responses Per Respondent:* 1.

*Estimated Annual Responses:* 590.

*Estimated Hours Per Request:* 1,220.

*Estimatd Annual Burden Hours:* 719,800.

*Frequency of Report:* On occasion.

**Donald J. Andreotta,**

*Deputy Chief Information Officer (Operations) Office of the Administrator.*

[FR Doc. 97–23990 Filed 9–9–97; 8:45 am]

BILLING CODE 7510–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–348]**

## Southern Nuclear Operating Company, Inc., et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–2, issued to the Southern Nuclear Operating Company, Inc., *et al.* (the licensee) for operation of the Joseph M. Farley Nuclear Plant, Unit 1, located in Houston County, Alabama.

The proposed amendment would allow a reduction in the number of required available movable detector thimbles (flux map paths) for Cycle 15. Currently, Farley Unit 1 Technical Specification 3.3.3.2, requires at least 75 percent of the 50 movable detector thimbles (38 flux map paths) available with two per quadrant. The proposed change would allow a reduction in the available paths to a minimum of 25 with three per quadrant.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The movable detector thimble reduction does not significantly increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. This modification does not directly initiate an accident. The consequences of accidents previously evaluated in the FSAR are unaffected by this proposed change because no change to any equipment response or accident mitigation scenario has resulted. There are no additional challenges to fission product barrier integrity.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The movable detector thimble reduction does not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed change. The proposed Technical Specification modification does not challenge the performance or integrity of any safety-related systems. Therefore, the possibility of a new or different kind of accident is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety.

No. The proposed change to the technical specifications does not involve a significant reduction in a margin of safety. The margin of safety associated with the acceptance criteria for any accident is unchanged.

The movable thimble reduction will have no affect on the availability, operability or performance of the safety-related systems and components. The movable detector thimble number reduction does require a change to the Technical Specifications but does not reduce the number or frequency of inspections or surveillances required by the Technical Specifications. Therefore, the movable detector thimble reduction will not reduce the margin of safety, as described in the Bases to any Technical Specification.

The Bases of the Technical Specifications are founded on the ability of the regulatory criteria being satisfied assuming the limiting conditions for operation for various systems. Conformance to the regulatory criteria for operation with the movable detector thimble reduction is demonstrated, and the regulatory limits are not exceeded, the margin of safety as defined in the Technical Specifications is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 10, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: 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. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 3, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 5th day of September 1997.

For the Nuclear Regulatory Commission.

**Jacob I. Zimmerman,**

*Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–23995 Filed 9–9–97; 8:45 am]

BILLING CODE 7590–01–U

---

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the

pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 18, 1997, through August 28, 1997. The last biweekly notice was published on August 27, 1997 (62 FR 45452).

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 10, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any

hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: 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. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is 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 for the particular facility involved.

*Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine*

*Date of amendment request:* August 15, 1997.

*Description of amendment request:* The proposed amendment would revise portions of the facility Technical Specifications regarding facility staffing and training requirements to power operations. By letter dated August 7, 1997, the licensee certified permanent cessation of power operations and permanent removal of fuel from the reactor vessel. By two letters both dated August 15, 1997, the licensee has also submitted a related ''Request for Exemption from Certain Requirements of 10 CFR 50.54, Conditions of License,'' and a ''Request for Approval of the Certified Fuel Handler Training and Retraining Program.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

The proposed change does not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The purpose of the proposed change is to eliminate the requirements for licensed operators and a licensed operator training program and to replace those with certified fuel handlers and a certified fuel handler training and retraining program. Since the plant has permanently ceased operation and will be maintained in a defueled condition, the range of accidents for which an operator needs to be trained has significantly diminished such that a training program of the depth and breadth of that required by 10 CFR [Part] 55 is no longer needed. In lieu of a 10 CFR [Part] 55 licensed operator training program, a[n] NRC-approved certified fuel handler training and retraining program will be implemented. Since this training program will adequately equip appropriate operations personnel for fuel handling operations, including responses to abnormal events/accidents, there will be no increase in the probability of these events occurring or in the consequences of these events. The proposed changes do not affect plant equipment or the procedures for equipment operation or response to abnormal events/accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The purpose of this proposed change is to eliminate the requirements for licensed operators and a licensed operator training program and to replace those with certified fuel handlers and a certified fuel handler training and retraining program. This change ensures the qualifications of operations personnel are commensurate with the tasks to be performed and the conditions to be responded to. This change does not affect plant equipment or the procedures for operating plant equipment and, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change is to eliminate the requirements for licensed operators and a licensed operator training program to replace those with certified fuel handlers and a certified fuel handler training and retraining program. This change ensures the qualifications of the operations personnel are commensurate with the tasks to be performed and the conditions to be responded to. The assumptions for a fuel handling accident in the Fuel Building are not affected by the proposed changes. Therefore, the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

*Attorney for licensee:* Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011.

*NRC Acting Project Director:* Ronald B. Eaton.

*Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of amendment request:* August 1, 1997.

*Description of amendment request:* The amendments would change Technical Specification Section 4.2.1 of Appendix B to the licenses. The changes include rewording of the section to generically state that Public Service Gas & Electric (PSE&G) will adhere to the Section 7, Incidental Take Statement, approved by the National Marine Fisheries Service (NMFS). Removing the specific requirements of this section enables PSE&G to utilize relief granted by the NMFS on a case-by-case basis.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes are administrative in nature and would in no way affect the initial conditions, assumptions, or conclusions of the Salem [Nuclear] Generating Station, Units 1 and 2, accident analyses. In addition, the proposed changes would not affect the operation or performance of any equipment assumed in the accident analyses. Based on the above information, we conclude that the proposed changes would not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes are administrative in nature and would in no way impact or alter the configuration or operation of the facilities and would create no new modes of operation. We therefore conclude that the proposed changes would not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

As indicated in the discussion of Criterion 1, the changes are administrative in nature and would in no way affect plant or equipment operation or the accident analysis. We therefore conclude that the proposed changes would not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

*Attorney for licensee:* Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Project Director:* John F. Stolz.

*Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama*

*Date of amendments request:* July 23, 1997.

*Description of amendments request:* The proposed amendments would revise the Technical Specifications (TSs) by relocating the reactor coolant system pressure and temperature limits from the TSs to the proposed Pressure Temperature Limits Report in accordance with the guidance provided by Generic Letter 96–03, ''Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed removal of the Reactor Coolant System (RCS) pressure temperature (P/T) limits from the Technical Specifications (TSs) and relocation to the proposed Pressure Temperature Limits Report (PTLR) in accordance with the guidance provided by Generic Letter (GL) 96–03 is administrative in that the requirements for the P/T limits are unchanged. The P/T limits proposed for inclusion in the PTLR are based on the fluence associated with 2775 MW [megawatts] thermal power and operation through 36 effective full power years (EFPY). GL 96–03 requires that the P/T limits be generated in accordance with the requirements of 10 CFR [Part] 50, Appendices G and H, documented in an NRC-approved topical report incorporated by reference in the TSs. Accordingly, the proposed curves have been generated using the NRC-approved methods described in WCAP–14040–NP–A, Revision 2, and meet the requirements of 10 CFR [Part] 50, Appendices G and H. TS 3.4.10.1 will continue to require that the RCS pressure and temperature be limited in accordance with the limits specified in the PTLR. The NRC-approved methodology for generating the P/T limit, WCAP–14040–NP–A, Revision 2, will be specified in TS 6.9.1.15 and NRC approval will be required in the form of a TS Amendment prior to changing the methodology. Use of P/T limit curves generated using the NRC-approved methods described in WCAP–14040–NP–A, Revision 2, as specified in TS 6.9.1.15, will provide additional protection for the integrity of the reactor vessel, thereby assuring that the reactor vessel is capable of providing its function as a radiological barrier.

TS 3.4.10.3 for Farley Nuclear Plant (FNP) Unit 1 and Unit 2 provides the operability requirements for RCS low temperature overpressure protection (LTOP). Specifically, TS 3.4.10.3 requires that two residual heat removal (RHR) system suction relief valves (RHRRVs) be operable or that the RCS be vented at RCS cold leg temperatures less than or equal to 310°F. GL 96–03 recognizes that RHRRVs do not have variable pressure lift setpoints and states that those plants that rely on the RHRRVs for LTOP should continue to address the LTOP requirements in the TS. Consistent with GL 96–03, the Farley Unit 1 and Unit 2 requirements for LTOP will be retained in TS 3.4.10.3.

Based on the above evaluation, the proposed changes are administrative in nature and do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed changes to remove the RCS P/T limits from the TSs and relocate them to the proposed PTLR is an administrative change. Consistent with the guidance provided by GL 96–03, the proposed P/T limits contained in the proposed PTLR meet the requirements of 10 CFR [Part] 50, Appendices G and H, and were generated using the NRC-approved methods described in WCAP–14040–NP–A, Revision 2. The proposed changes do not result in a physical change to the plant or add any new or different operating requirements on plant systems, structures, or components with the exception of limiting the number of operating RCPs [reactor coolant pumps] at RCS temperatures below 110°F. Limiting the number of operating RCPs below 110°F results in a reduction in the [delta]P between the reactor vessel beltline and the RHRRVs, thereby providing additional margin to limits of Appendix G. Provisions are made to allow the start of a second RCP at temperatures below 110°F in order to secure the pump that was originally operating without interrupting RCS flow. The LTOP enable temperature exceeds the minimum LTOP enable temperature determined using the NRC-approved methods described in WCAP–14040–NP–A, Rev. 2, thereby providing additional assurance that the LTOP system will be available to protect the RCS in the event of an overpressure transient at RCS temperatures at or below 310°F. Using the methods contained in WCAP–14040–NP–A, Rev. 2, the minimum boltup temperature for the reactor vessel flange region is 60°F which is less than the design limits of the fuel cladding. Administrative controls require a minimum RCS temperature of 68°F when fuel is loaded in the reactor vessel to protect against brittle failure of the fuel cladding, and also require that the component cooling water (CCW) temperature be maintained between 60°F and 105°F during refueling operations, thus reducing the potential for the RCS temperature to be less than the minimum boltup temperature specified in the proposed PTLRs.

As stated in the above response, implementation of the proposed changes do not result in a significant increase in the probability of a new or different accident (i.e., loss of reactor vessel integrity). The RCS P/T limits will continue to meet the requirements of 10 CFR [Part] 50, Appendices G and H, and will be generated in accordance with the NRC approved methodology described in WCAP–14040–NP–A, Rev. 2. Therefore, the proposed changes do not result in a significant increase in the possibility of a new or different accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of the RCS P/T limits from the TSs and relocating them to the proposed PTLR. The RCS P/T limits will continue to meet the requirements of 10 CFR [Part] 50, Appendices G and H. To provide additional assurance that the P/T limits continue to meet the requirements of Appendices G and H, TS 6.9.1.15 will require the use of the NRC-approved methodology described in WCAP–14040–NP–A, Rev. 2, to generate P/T limits. The RCS LTOP requirements will be retained in TS 3.4.10.3 due to use of the RHRRVs for LTOP, consistent with the guidance provided by GL 96–03. The LTOP enable temperature exceeds the LTOP enable temperature determined in accordance with the NRC-approved methodology, thus protecting the RCS in the event of a low temperature overpressure transient over a broader range of temperatures than required by WCAP–14040–NP–A, Rev. 2. Administrative procedures preclude operation of the RCS at temperatures below the minimum boltup temperature for the reactor vessel head, thus precluding the possibility of tensioning the reactor vessel head at RCS temperatures below the minimum boltup temperature. Operation of the plant in accordance with the RCS P/T limits specified in the PTLR and continued operation of the LTOP system in accordance with TS 3.4.10.3 will continue to meet the requirements of 10 CFR [Part] 50, Appendices G and H, and will therefore, assure that a margin of safety is not significantly decreased as the result of the proposed changes.

Based on the preceding analysis, SNC [Southern Nuclear Operating Company, Inc.] has determined that removal of the RCS P/T limits from the TS and relocation to the proposed PTLR will not significantly increase the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. SNC therefore concludes that the proposed change meets the requirements of 10 CFR 50.92(c) and does

not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. *Local Public Document Room location:* Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302. *Attorney for licensee:* M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201. *NRC Project Director:* Herbert N. Berkow.

*Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of amendment request:* June 20, 1997 (TS–97–004).

*Description of amendment request:* The proposed amendment would be an administrative change that would revise the analytical methodology used to determine the low temperature overpressure protection (LTOP) event heatup and cooldown curves. This revised methodology would be incorporated by reference in the Watts Bar Nuclear Plant (WBN), Unit 1 Technical Specification (TS) 5.9, ''Reporting Requirements,'' Section 5.9.6, ''Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR),'' upon approval for use by the U.S. Nuclear Regulatory Commission (NRC). The revised methodology extends the current LTOP requirements through the end of 7 effective full power years (EFPY). The only technical change being proposed is the substitution of the 7 EFPY American Society of Mechanical Engineering (ASME), Appendix G, heatup and cooldown curves adjusted by ASME Code Case N–514, ''Low Temperature Overpressure Protection'' in place of the current 1.5 EFPY curves as the bounding curves for the LTOP setpoints. This change will not impact the current 10 CFR 50, Appendix G, pressure/temperature (P/T) limit curves used for heatup and cooldown that are based on 7 EFPY.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Nuclear Regulatory Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility, in accordance with the proposed amendment, would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated: or (2) create the possibility of a new or different kind of accident from any accident previously evaluated: or (3) involve a significant reduction in a margin of safety. Each standard is discussed below for the proposed amendment.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LTOP setpoints (identified as the cold overpressure mitigation system (COMS) for WBN), adjusted for instrument inaccuracy, pressure differential, and setpoint overshoot by the scaling and setpoint documents (SSDs), ensure that the 10 CFR 50, Appendix G P/T [pressure and temperature] limits based on 7 EFPY are not exceeded by more than the provisions of ASME Code Case N–514, and therefore, ensure that the RCS integrity is maintained.

The change does not modify the RCS pressure boundary, nor make any physical changes to the facility design, material, construction standards, or setpoints. The LTOP enabling temperature based on TS 3.4.12, ''Cold Overpressure Mitigation System (COMS),'' is [less than or equal to] 350 degrees F and is more conservative than a value of 271.1 degrees F ($RT_{NDT}$ + 90 degrees F) based on 7 EFPY. This temperature would be acceptable based on NRC Branch Technical Position-Reactor Systems Branch (BTP–RSB)–5.2, ''Overpressurization Protection of Pressurized Water Reactors While Operating at Low Temperatures.'' The LTOP enabling temperature remains unchanged by this proposed amendment. The probability of a LTOP event occurring is independent of the P/T limits for the RCS pressure boundary; therefore, the probability of an LTOP event occurring remains unchanged.

The calculation of the P/T limits in accordance with approved regulatory methods based on 7 EFPY provides assurance that reactor pressure vessel fracture toughness requirements are met and the integrity of the RCS pressure boundary is maintained. LTOP setpoints based on 1.5 EFPY P/T limits have provided margin such that a pressure excursion exceeding the 7 EFPY limits would not exceed the 1.5 EFPY limits. This margin between the 7 EFPY curves and the LTOP setpoints is maintained by changing the bounding curves for the LTOP setpoints to 7 EFPY curves adjusted by the provisions of ASME Code Case N–514. The only technical change being made is the bounding curves which provide the basis for the current LTOP setpoints.

The use of theoretical fluence for generating the P/T curves to be used for the first 7 EFPY is appropriate and was submitted July 31, 1995, with the WBN Unit 1 PTLR, Revision 4 and WCAP–13829, Revision 2, ''Heatup and Cooldown Limit Curves for Normal Operation for Watts Bar Unit 1.'' The present 7 EFPY curves are generated using a theoretical value for fluence calculated by Westinghouse in accordance with NRC approved methodology since WBN had no surveillance capsule data available at the time of plant startup. This value for fluence is conservative, and the actual fluence to the intermediate shell forging (the controlling beltline material) is expected to be significantly less than the theoretical value used to generate the initial 7 EFPY curves since WBN is transitioning to a low-leakage core. The LTOP bounding curves are based on 7 EFPY curves adjusted in accordance with ASME Code Case N–514 which were generated using the same theoretical fluence as used for the P/T curves. The significance of using the theoretical value of fluence in generating these curves is the additional margin that exists between the 7 EFPY theoretical curves and curves that would be generated using actual fluence values from capsule data. This additional margin reduces the significance of changing the LTOP basis from the 1.5 EFPY curves to the 7 EFPY curves adjusted for ASME Code Case N–514.

This change does not adversely affect the integrity of the RCS such that its function in the control of radiological consequences is affected. In addition, the change does not affect any fission barrier. The change does not degrade or prevent the LTOP power operated relief valves (PORVs) or other safety related systems from responding to accidents described in Chapter 15 of the Final Safety Analysis Report (FSAR). In addition, the change does not alter any assumptions previously made in the radiological consequences of an accident described in the FSAR. Therefore, the consequences of an accident previously evaluated in the FSAR are not increased. Thus, the operation of WBN Unit 1 in accordance with this proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Appendix G P/T limitations were prepared using methods derived from the ASME Boiler and Pressure Vessel Code Section III and the criteria set forth in NRC Regulatory Standard Review Plan 5.3.2, ''Pressure-Temperature Limits.'' The use of ASME Code Case N–514 and the theoretical fluence value for 7 EFPY does not modify the RCS pressure boundary, nor make any physical changes to the LTOP setpoints or system design. The proposed change was prepared in accordance with regulatory requirements and provides evaluation of LTOP events based on 7 EFPY theoretical fluence which is more limiting than actual expected neutron exposure for that same period.

This proposed change is an administrative change which incorporates by reference the use of an NRC approved methodology; therefore, the change does not cause the initiation of any accident nor create any new creditable limiting failure for safety-related

systems and components. The change does not result in an event previously deemed incredible being made credible. As such, it does not create the possibility of an accident different than any evaluated in the FSAR.

The change does not have any effect on the ability of the safety-related systems to perform their intended safety functions. The change does not create failure modes that could adversely impact safety-related equipment. Therefore, it will not create the possibility of a malfunction of equipment important to safety different than previously evaluated in the FSAR. Thus, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in margin of safety.

The 10 CFR 50, Appendix G P/T limitations were prepared using methods derived from ASME Section III and criteria set forth in NRC Regulatory Standard Review Plan 5.3.2. These documents along with the calculational limitations specified in 10 CFR 50.61 are an acceptable method for implementing the requirements of 10 CFR 50 Appendices G and H. Inherent conservatisms in the P/T limits resulting from these documents include:

a. An assumed defect in the reactor vessel wall with a depth equal to ¼ of the thickness (T) of the vessel wall and a length equal to 1½ times the thickness of the vessel wall.

b. Assumed reference flaw oriented in both longitudinal and circumferential directions and limiting material property. At WBN, the only weld in the core region is oriented in the circumferential direction.

c. A factor of safety of 2 is applied to the membrane stress intensity factor.

d. The limiting toughness is based upon a reference value ($K_{IM}$) which is the lower bound of the dynamic crack initiation and arrest toughness.

e. A 2-sigma margin term is applied in determining the adjusted reference temperature (ART) that is used in calculating the limiting toughness.

Beyond the conservatisms described above, WBN has the following additional margin:

a. The value of fluence used in the calculation of the WBN Unit 1 Appendix G P/T limits is a theoretical value calculated by NRC approved methodology.

b. The ART for 7 EFPY is based on the theoretical value for fluence and therefore is conservative. The LTOP enabling temperature of [less than or equal to] 350 degrees F in accordance with TS 3.4.12 is conservative with respect to ($RT_{NDT}$ + 90 degrees F) which based on an ART of 181.1 degrees F would equal 271.1 degrees F. An enabling temperature of ($RT_{NDT}$ + 90 degrees F) is based on NRC BTP–RSB 5.2.

The ASME Working Group for Operating Plant Criteria developed Code Case N–514 as an alternative methodology to the safety margin requirements of Appendix G to 10 CFR 50. The Code Case provides criteria to determine pressure limits during LTOP events that avoid certain operational restrictions, provide adequate margins against failure of the reactor vessel, and reduce the potential for unnecessary activation of the relief valves used for LTOP. Specifically, the N–514 Code Case allows determination of the LTOP setpoints such that for LTOP events the maximum pressure in the reactor vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G curves, and redefines the enabling temperature as a coolant temperature less than 200 degrees F or a reactor vessel metal temperature less than $RT_{NDT}$ + 50 degrees F. Code Case N–514 has been approved by the ASME Code Committee and its content has been incorporated in Appendix G of ASME Section XI and published in the 1993 Addenda and 1995 Edition. Code Case N–514 has not been approved for use in Regulatory Guide 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI;'' however, it has been included in the Draft Regulatory Guide 1.147 (Task DG–1050) which is currently out for public review and comment. As stated above, WBN Unit 1 uses Appendix G for the P/T limits for plant operation and an LTOP enabling temperature greater than $RT_{NDT}$ + 90 degrees F which is more conservative than the alternative methodology contained in Code Case N–514.

The need for implementation of Code Case N–514 at WBN involves the avoidance of certain operational restrictions associated with low temperature operation of the plant. Use of Appendix G P/T limits to determine the PORV setpoints would result in pressure setpoints within the operating window; consequently, no margin would be available for normal operating pressure surges. Therefore, operating with these limits could result an unnecessary challenge to the PORVs and cavitation of the reactor coolant pumps (RCP) during normal operation. Additionally, the need to raise the RCS inventory by external heating methods to a temperature high enough to avoid PORV activation when starting a RCP from a RCS cold shutdown condition could result in undesirable thermal transients in the RCS.

Utilizing the methodology set forth in the ASME Boiler and Pressure Vessel Code Section XI, Appendix G, which includes the provisions of Code Case N–514, NRC Regulatory Standard Review Plan 5.3.2, 10 CFR 50.61, and 10 CFR 50, Appendices G and H with the above additional margins ensures that proper limits and conservative safety factors are maintained. Thus the proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Project Director:* Frederick J. Hebdon.

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for 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 these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

*Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Date of application for amendments:* March 18, 1997.

*Brief description of amendments:* The amendments revise the Technical Specifications (TS) to increase the High Pressure Coolant Injection (HPCI)

system low pressure isolation setpoint from greater than 80 psig to greater than 100 psig.

*Date of issuance: August 21, 1997.*

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 161, 156.

*Facility Operating License Nos. DPR–19 and DPR–25:* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: April 9, 1997 (62 FR 17228).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 21, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

*Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* June 12, 1997.

*Brief description of amendments:* The amendments change the name ''Duke Power Company'' to ''Duke Energy Corporation'' in the Catawba operating licenses and appendices as a result of Duke Power Company's recent name change.

*Date of issuance:* August 22, 1997.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* 161 and 153.

*Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the Facility Operating Licenses.

*Date of initial notice in* **Federal Register**: July 2, 1997 (62 FR 35848).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 22, 1997, and an Environmental Assessment dated July 31, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

*Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of application for amendments:* June 12, 1997.

*Brief description of amendments:* The amendments change the name ''Duke Power Company'' to ''Duke Energy Corporation'' in the McGuire operating licenses and appendices as a result of Duke Power Company's recent name change.

*Date of issuance:* August 26, 1997.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* 176 and 158.

*Facility Operating License Nos. NPF–9 and NPF–17:* Amendments revised the Licenses.

*Date of initial notice in* **Federal Register**: July 2, 1997 (62 FR 35848).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1997. An Environmental Assessment was issued and dated August 15, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

*Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* October 26, 1995 and supplemented by letters dated April 7 and July 30, 1997.

*Brief description of amendment:* The amendment revised the technical specifications for 16 editorial changes and deletes the reuirement for a program to prevent and detect Asiatic Clams (Corbicula) in the service water system (SWS). The Corbicula program is no longer needed because the facility has been modified and SWS no longer takes water from the Mississippi River; source of the larvae and infestation.

*Date of issuance:* August 26, 1997.

*Effective date:* August 26, 1997.

*Amendment No.:* 95.

*Facility Operating License No. NPF–47:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: December 6, 1995 (60 FR 62492).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1997.

No significant hazards consideration comments received. No.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

*Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* November 15, 1996, as supplemented May 9 and August 15, 1997.

*Brief description of amendment:* The amendment revises the technical specifications to increase the two recirculation loop Minimum Critical Power Ratio (MCPR) from 1.07 to 1.10 and the single recirculation loop MCPR limit from 1.08 to 1.12.

*Date of issuance:* August 26, 1997.

*Effective date:* August 26, 1997.

*Amendment No.:* 96.

*Facility Operating License No. NPF–47:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: January 2, 1997 (62 FR 127).

The May 9 and August 15, 1997, submittal provided clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1997.

No significant hazards consideration comments received. No.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

*Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* January 20, 1997 as supplemented by letter dated July 7, 1997.

*Brief description of amendment:* The amendment revises the technical specifications to allow the use of flow control spectral shift strategies to increase cycle energy. The revision is based on a Maximum Extended Load Line Limit (MELLL) analysis for the River Bend Station.

*Date of issuance:* August 26, 1997.

*Effective date:* August 26, 1997.

*Amendment No.:* 97.

*Facility Operating License No. NPF–47:* The amendment revised the Technical Specifications/operating license.

*Date of initial notice in* **Federal Register**: February 26, 1997 (62 CFR 8799).

The July 7, 1997 submittal provided clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

*Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* November 6, 1996, as supplemented by letter dated July 31, 1997.

*Brief description of amendment:* The amendment revises the Technical Specifications to delete the requirement for the Penetration Valve Leakage Control System. The licensee requested deferal of the proposal to increase the allowed leakage by main steam isolation valves and to delete the requirement for the Main Steam Positive Leakage Control System.

*Date of issuance:* August 26, 1997.

*Effective date:* August 26, 1997.

*Amendment No.:* 98.

*Facility Operating License No. NPF–47:* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: January 2, 1997 (62 FR 125).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

*Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi*

*Date of application for amendment:* October 22, 1996, as supplemented by letter dated June 26, 1997.

*Brief description of amendment:* The amendment revises Figure 3.4.11–1, ''Minimum Reactor Vessel Metal Temperature vs. Reactor Vessel Pressure,'' in Limiting Condition for Operation 3.4.11, ''RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits,'' of the Technical Specifications. The previous figure was only up to 10 Effective Full Power Years (EFPYs) and this amendment revises the figure up to 32 EFPYs. There are now five curves of Figure 3.4.11–1 for five different EFPY periods: up to 16, 16 to 20, 20 to 24, 24 to 28, and 28 to 32. The licensee submitted two sets of curves. The first set replaced TS Figure 3.4.11–1. The second set were duplicates of the first set except the second set also contained detailed information used in development of the curves and would be included in the next update of the Updated Final Safety Analysis Report. There were also minor additions to Surveillance Requirements (SRs) 3.4.11.1 and 3.4.11.2 to have the SRs reference the ''applicable Figure 3.4.11–1 based on the current effective full power year (EFPY).''

*Date of issuance:* August 27, 1997.

*Effective date:* August 27, 1997.

*Amendment No:* 132.

*Facility Operating License No. NPF–29:* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register**: February 26, 1997 (62 FR 8797).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* April 11, 1997.

*Brief description of amendment:* The amendment modifies Technical Specifications 3.3.3.7.3, and Surveillance Requirements (SR) 4.3.3.7.3 for the broad range gas detection system. Also it includes some changes to the Bases in Section 3/4.3.3.7 to incorporate information associated with the proposed modifications. The licensee is planning to replace the existing toxic gas monitors in the system with a new, more advanced gas monitors.

*Date of issuance:* August 19, 1997.

*Effective date:* August 19, 1997, to be implemented within 90 days.

*Amendment No.:* 133.

*Facility Operating License No. NPF–38:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 7, 1997 (62 FR 24987)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

*Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia*

*Date of application for amendment:* April 29, 1997, as supplemented by letter dated May 28, 1997.

*Brief description of amendment:* The amendment revises Hatch Unit 1 reactor vessel pressure and temperature limits to reflect data collected from the material sample recovered during the March 1996 Unit 1 outage.

*Date of issuance:* August 19, 1997.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 207.

*Facility Operating License No. DPR–57:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: July 16, 1997 (62 FR 38138).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

*GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of application for amendment:* October 4, 1996, as supplemented June 10 and August 15, 1997 (TSCR 250).

*Brief description of amendment:* The amendment changes the Safety Limit Minimum Critical Power Ratio and as a result, the operating Minimum Critical Power Ratio. The amendment also capitalized certain definitions and provided a uniform type font for Sections 2.1 and 3.10.

*Date of Issuance:* August 26, 1997.

*Effective date:* August 26, 1997, with full implementation within 30 days.

Amendment No.: 192.

*Facility Operating License No. DPR–16.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: November 6, 1996 (61 FR 57484).

The Commission's related evaluation of this amendment is contained in a

Safety Evaluation dated August 26, 1997.

The June 10 and August 15, 1997, submittals provided clarifying information that did not alter the staff's initial proposed no significant hazards considerations determination.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

*GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania*

*Date of application for amendment:* April 21, 1997, as supplemented July 17, 1997.

*Brief description of amendment:* The amendment reduces the required volume of borated water in each core flood tank from 1040 $ft^3$ to 940 $ft^3$, reduces the required high pressure injection pump flowrate from 500 gallons per minute (gpm) to 431 gpm, and deletes the local manual valve operability option for decay heat system valves DH–V–6A and DH–V–6B.

*Date of issuance:* August 27, 1997.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.: 203.*

*Facility Operating License No. DPR–50.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 21, 1997 (62 FR 27795).

The July 17, 1997, submittal provided clarifying information that did not alter the initial no significant hazards determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

*Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* April 22, 1997.

*Brief description of amendments:* The proposed amendment revised Technical Specifications 5.3.1, Fuel Assemblies, and 6.9.1.6, Core Operating Limits Report, to allow use of an alternate zirconium-based fuel cladding, ZIRLO, and limited substitution of fuel rods by ZIRLO filler rods.

*Date of issuance:* August 19, 1997.

*Effective date:* August 19, 1997.

*Amendment Nos.:* Unit 1—Amendment No. 89; Unit 2—Amendment No. 76.

*Facility Operating License Nos. NPF–76 and NPF–80:* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 21, 1997 (62 FR 27795).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

*Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut*

*Date of application for amendment:* November 20, 1995.

*Brief description of amendment:* The amendment changes the Technical Specifications (TSs) by providing clarifications to the applicability and action statements in TS Table 3.3–12 relating to the Steam Generator Blowdown Monitor and the Condensate Polishing Facility Waste Neutralizing Sump radiation monitor.

*Date of issuance:* August 26, 1997.

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment No.:* 207.

*Facility Operating License No. DPR–65:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: December 20, 1995 (60 FR 65683).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 26, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* May 1, 1997.

*Brief description of amendment:* Technical Specifications 3/4.8.2.2 and 3/4.8.3.2 specify which electrical power systems are required to be operable in Modes 5 and 6. The amendment clarifies the requirements by identifying the specific equipment required and their alignments in Modes 5 and 6.

*Date of issuance:* August 21, 1997.

*Effective date:* As of the date of issuance, to be implemented within 60 days.

*Amendment No.:* 146.

*Facility Operating License No. NPF–49:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: June 4, 1997 (62 FR 30637).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 21, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* May 5, 1997.

*Brief description of amendment:* Technical Specification Surveillance 4.5.2.b.1 requires that the emergency core cooling system piping be verified full of water at least once per 31 days. The amendment revises the surveillance to exempt the operating charging pump(s) and associated piping from the requirement to be verified full of water and moves the description of the verification method from the surveillance to the Bases section.

*Date of issuance:* August 28, 1997.

*Effective date:* As of the date of issuance, to be implemented within 60 days.

*Amendment No.:* 147.

*Facility Operating License No. NPF–49:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: June 4, 1997 (62 FR 30638).

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated August 28, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope.

*PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania*

*Date of application for amendments:* March 31, 1997, as supplemented by letter dated June 25, 1997.

*Brief description of amendments:* These amendments extend the APRM flow bias instrumentation surveillance interval from 18 months to 24 months. This will eliminate the need to perform on-line APRM surveillance testing, which requires plant operators to place an operating unit in a half scram configuration.

*Date of issuance:* August 19, 1997.

*Effective date:* Units 2 and 3 effective as of date of issuance.

*Amendments Nos.:* 219 and 222.

*Facility Operating License Nos. DPR–44 and DPR–56:* The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 7, 1997 (62 FR 24988).

The supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

*Southern Nuclear Power Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia*

*Date of application for amendments:* June 13, 1997, as supplemented by letter dated July 18, 1997.

*Brief description of amendments:* The amendments revise the pressurizer safety relief valve setpoint specified in Technical Specification 3.4.10.

*Date of issuance:* August 26, 1997.

*Effective date:* As of the date of issuance to be implemented for Unit 1 prior to or after initial entry into Mode 3 (in accordance with the provisions of the note to the Applicability for LCO 3.4.10) following the fall 1997 refueling outage; for Unit 2 prior to or after initial entry into Mode 3 (in accordance with the provisions of the note to the Applicability for LCO 3.4.10) following the spring 1998 refueling outage.

*Amendment Nos.:* 98 and 76.

*Facility Operating License Nos. NPF–68 and NPF–81:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: July 16, 1997 (62 FR 38139).

The supplemental material did not change the no significant hazards finding or expand the scope of the **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

*TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas*

*Date of amendment request:* December 7, 1994 (TXX–94326), as supplemented by letter dated June 21, 1996 (TXX–96384).

*Brief description of amendments:* These changes revised Section 3.7.1.5 of the Technical Specification to increase the Allowed Outage Time for one inoperable Main Steam Isolation Valve (MSIV) while in Mode 1, and to clarify requirements related to inoperable MSIVs while in Modes 2 and 3.

*Date of issuance:* August 18, 1997.

*Effective date:* August 18, 1997, to be implemented within 60 days.

*Amendment Nos.:* 54 and 40.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: February 1, 1995 (60 FR 6312).

The additional information contained in the supplemental letter dated June 21, 1996, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 18, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

*Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of application for amendments:* April 14, 1997 (TSCR 197), as supplemented on August 11, 1997.

*Brief description of amendments:* These amendments revise Technical Specifications (TS) Sections 15.6.2, ''Organization,'' TS 15.6.5.1, ''Manager's Supervisory Staff,'' TS 15.6.6, ''Reportable Event Action,'' TS 15.6.7, ''Actions To Be Taken If A Safety Limit Is Exceeded,'' and TS 15.7.8, ''Administrative Controls,'' by changing the title of the corporate officer responsible for nuclear operations from the ''Vice President-Nuclear Power,'' to the ''Chief Nuclear Officer.''

*Date of issuance:* August 25, 1997.

*Effective date:* August 25, 1997, with full implementation within 45 days.

*Amendment Nos.:* 177 and 181.

*Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: May 21, 1997 (62 FR 27802), as corrected May 29, 1997 (62 FR 29163) The August 11, 1997, submittal provided a corrected TS page. This information was within the scope of the action noticed and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 25, 1997.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 3rd day of September 1997.

For The Nuclear Regulatory Commission.

**Bruce E. Boger,**

*Director, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.*

[FR Doc. 97–23820 Filed 9–9–97; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, October 9, 1997
Thursday, October 23, 1997
Thursday, November 6, 1997
Thursday, November 20, 1997
Thursday, December 11, 1997
Thursday, December 18, 1997

The meetings will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: September 4, 1997.

**Phyllis G. Heuerman,**

*Chair, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 97–23889 Filed 9–9–97; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 22808; 813–154]**

### Credit Suisse First Boston, Inc.; Notice of Application

September 3, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9, section 17 (except for certain provisions of paragraphs (a), (d), (f), (g), and (j) of section 17), sections 36 through 53, and the rules thereunder.

**SUMMARY OF APPLICATION:** Applicant Credit Suisse First Boston, Inc. requests an order to exempt certain investment funds formed for the benefit of key employees of applicant and its affiliates from most of the provisions of the Act, and to permit the funds to engage in certain joint arrangements. Each fund will be an ''employees' securities company'' as defined in section 2(a)(13) of the Act.

**FILING DATES:** The application was filed on October 9, 1996, and amended on March 17, June 13, and July 15, 1997. Applicant has agreed to file an amendment during the notice period, the substance of which is included in this notice.

**HEARING OF NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 26, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 11 Madison Avenue, New York, New York 10010.

**FOR FURTHER INFORMATION CONTACT:** H.R. Hallock, Jr., Special Counsel, at (202) 942–0564, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee by writing the SEC's Public Reference Branch at 450 Fifth Street, NW., Washington, DC 20549, or by telephone at (202) 942–8090.

### Applicant's Representations

1. Applicant, a Delaware corporation, is a subsidiary of Credit Suisse First Boston, a Swiss bank. Credit Suisse First Boston is in turn a subsidiary of Credit Suisse Group (formerly CS Holding), a publicly-held Swiss corporation. Applicant and its affiliates (as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''1934 Act'')) (the ''CSFB Companies'') provide a range of banking, investment, and financial services to corporations, governments, and other clients throughout the world. Credit Suisse First Boston Corporation (''CSFB Corporation''), a registered broker-dealer under the 1934 Act and a registered investment adviser under the Investment Advisers Act of 1940, is one of applicant's principal subsidiaries.

2. Applicant proposes to form one or more limited partnerships, business trusts or limited liability companies (''Partnerships'').[1] The Partnerships, each of which will operate as a closed-end investment company, will enable certain key employees of the CSFB Companies to participate in investment opportunities that come to the Companies' attention. The investment objectives and strategies for each Partnership will be set forth in a private placement memorandum given to investors in the Partnership (''Limited Partners'').

3. Each Partnership will have a general partner or manager (''General

[1] The constituent agreements of the Partnerships are referred to in this notice as ''limited partnership agreements.''

Partner'') whose executive officers and directors will be employees of CSFB Companies who are eligible to invest in the Partnership. The General Partner will manage and make all investment decisions for the Partnerships, except for certain responsibilities delegated to a manager or administrator.

4. Interests in the Partnerships (''Units'') will be offered without registration in reliance on section 4(2) or another exemption in the Securities Act of 1933 (the ''1933 Act'') and will be sold without a sales load. Units will be sold only (a) to current and former officers, directors, employees, and persons on retainer of a CSFB Company who have been approved to purchase Units by the General Partner (''Eligible Employees''); (b) to immediate family members of such Eligible Employees (''Qualified Family Members''), and (c) to trusts or other investment vehicles established by such Eligible Employees for their benefit and/or the benefit of their immediate families (collectively with Eligible Employees and Qualified Family Members, ''Qualified Participants'').

5. Eligible Employees and Qualified Family Members must be ''accredited investors'' meeting the income requirements set forth in rule 501(a)(6) of Regulation D under the 1933 Act. In addition, the General Partner must reasonably believe, prior to offering Units to an Eligible Employee or Qualified Family Member, that the individual is capable of evaluating the merits and risks of the partnership investment and is able to bear the economic risk and afford a complete loss of the investment.

6. The General Partner may be paid an annual management fee by the Partnership. The General Partner or another CSFB Company also may receive a performance-based fee (''carried interest''), based on Partnership gains and losses, as well as other compensation, such as fees in connection with Partnership investments. CSFB Corporation and other CSFB Companies may be compensated for services to companies in which the Partnerships invest and may otherwise engage in normal business activities that conflict with the interests of the Partnerships. Applicant believes these conflicts will be mitigated by the community of interest among the CSFB Companies and the Limited Partners.

7. Partnership net profits and losses will be allocated to the General Partner and the Limited Partners in the same proportion as their respective paid-in capital to the Partnership, except that Limited Partner capital accounts will not be reduced below zero, the General Partner may receive a carried interest, and certain adjustments may be made for federal income tax purposes. A General Partner or another CSFB Company may contribute capital to a Partnership in an amount up to 10 times the amount contributed by Limited Partners. The General Partner or other CSFB Company may receive, instead of an allocation of profits and losses, a cumulative return on part of such contribution at a rate based on the prime lending rate or similar measure. A CSFB Company also may lend money to a Partnership at an annual rate no less favorable than the rate obtainable on an arm's-length basis.

8. Partnerships generally will co-invest with CSFB Companies in investment funds sponsored or advised by the CSFB Companies or third parties, or directly in securities of operating companies. A Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, a CSFB Company. A co-investment by a Partnership generally will not exceed 50% of the combined investments of the Partnership and CSFB Company. In the event a Partnership participates in an investment in which no CSFB Company participates but in connection with which a CSFB Company may receive some economic benefit, the Partnership will invest the lesser of (a) 20% of the total investment made by all investors, (b) 20% of the Partnership's committed capital, and (c) the largest investment made by any other investor not affiliated with CS First Boston.

9. Limited Partners will not be allowed to transfer their Units without the consent of the General Partner, and then only to Qualified Participants. If a limited Partner terminates employment with a CSFB Company, the Units may be redeemed by the Partnership or purchased by the CSFB Company. The terms of such redemptions or purchases, including the possibility of forfeiture for failure to make required capital contributions, will be fully disclosed when Partnership Units are offered. The purchase or redemption price will not be less than the lower of (a) the amount invested plus interest or (b) the fair value (as determined by the General Partner) of the Units at the end of the Partnership's fiscal year in which such termination occurs, less any amounts forfeited for failure to make required capital contributions. The General Partner will limit any forfeiture to not more than 25% of a defaulting Limited Partner's capital account balance.

10. Partnerships will have a scheduled term that may be extended for additional periods by the General Partner or by vote of the Limited Partners. A Partnership will be dissolved upon (a) the Partnership's insolvency or sale of substantially all of its assets; (b) a determination by the General Partner that continued operation of the Partnership might be inconsistent with its fundamental investment purpose or involve a violation of law; (c) the vote of Limited Partners holding a majority of Units; or (d) the Limited Partners' failure to replace a General Partner. In the event of dissolution, the Partnership's net assets will be distributed to partners pro rata based on their respective capital accounts as provided in the limited partnership agreement.

11. The General Partner will send the Limited Partners of each Partnership annual reports regarding its operations, investment activities, and current valuation of assets. Except for Partnerships formed to make a single investment, such reports will contain audited financial statements with disclosure of outstanding borrowings. The General Partner also will send annual reports to Limited Partners setting forth tax information necessary for the preparation of tax returns.

**Applicant's Legal Analysis**

1. Section 6(b) of the Act provides, in part, that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 6(b) provides that the Commission shall consider, in determining which provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section

7, certain provisions of the Act, as specified by the SEC, shall be applicable to the company and other persons dealing with the company as though such company were registered under the Act. Applicant requests an order under sections 6(b)) and 6(e) exempting the Partnerships from all provisions of the Act except section 9, section 17 (except for certain provisions of sections 17(a), (d), (f), (g), and (j)), sections 36 through 53, and the rules and regulations thereunder.

3. Applicant believes that, under the factors set forth in section 6(b)), it is appropriate to grant the requested exemption. Applicant notes that all directors and senior officers of the General Partner will be eligible employees, all Limited Partners will be Qualified Participants, and the General Partner itself will invest in the Partnerships. Applicant also notes that Units will be sold without a sales load and that no compensation will be paid to the General Partner other than as provided in the limited partnership agreement.

4. Applicant submits that the protections of the Act generally are unnecessary in view of the community of interest among the CSFB Companies and the Limited Partners. Applicant also notes that the CSFB Companies generally will invest side by side with the Partnerships, and the Partnerships will be managed by persons who will also be Limited Partners and not third parties seeking to benefit from providing services to or engaging in transactions with the Partnership. Applicant states that the Partnerships are designed to provide capital building opportunities to key employees that are competitive with those at other financial services firms and to facilitate the recruitment of high caliber professionals. Applicant notes that the Partnerships will benefit the Limited Partners by providing the opportunity to participate in investments that would not otherwise be available to them.

5. Applicant contends that requiring the Partnerships to comply with various provisions of the Act would be unnecessarily burdensome. Applicant asserts that the Partnerships' operation is not likely to present the abuses the Act is intended to address, and that the limited partnership agreements will provide substantial protection to the Limited Partners, including specific requirements regarding appraisals and access to Partnership reports and limits on the authority of the General Partner. Applicant also believes that Eligible Employees and Qualified Family Members, as financially sophisticated persons, generally do not require the protections of the Act.

6. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling or purchasing any security or other property to or from such company. Applicant requests an exemption from section 17(a) to permit a Partnership generally to purchase securities owned or issued by, and to sell securities and lend money to: (a) Any CSFB Company or other affiliated person of applicant (a ''Section 17(a) Affiliate''); (b) entities sponsored, managed, or advised by a Section 17(a) Affiliate; (c) entities whose securities are underwritten by a Section 17(a) Affiliate or an affiliated person of such Affiliate; and (d) entities with certain other business relationships with Section 17(a) Affiliates.

7. Applicant submits that the requested exemptions from section 17(a) are consistent with the purposes of the Partnerships and the protection of investors. Applicant believes that an exemption from section 17(a) is necessary to enable the Partnerships to participate in attractive investments that may be offered by CSFB Companies. Applicant asserts that the private placement memorandum will describe the possible extent of a Partnership's dealings with Section 17(a) Affiliates, and the Limited Partners will be able to evaluate the risks associated with those dealings. Applicant also asserts that the community of interest among the Limited Partners and CSFB companies will reduce the risk of abuse in such transactions.

8. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicant requests exemptive relief to permit a Partnership to invest in an entity in which another Partnership, CSFB Company, or certain affiliated persons also invest. Applicant submits that the requested relief for co-investments is consistent with section 17(d)'s objective of preventing an investment company affiliate from causing the company to participate in a joint endeavor on a disadvantageous basis. Applicant also submits that the community of interest among the Limited Partners and the CSFB companies makes it unlikely that a co-investor would enter into a transaction with a Partnership with an intent to disadvantage the Partnership. In addition, applicant claims that strict compliance with section 17(d) and rule 17d–1 would prevent the Partnerships from participating in attractive investments solely because an affiliate of the Partnership also may participate in the investment. Finally applicant contends that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described above.

9. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. To the extent that a Partnership's assets may be held in custody by an exchange member, applicant requests an exemption from the requirements of paragraphs (a) and (c) of rule 17f–1 that the custodial agreement be in writing and transmitted to the SEC. Applicant also requests an exemption from the requirement of paragraph (b)(4) of rule 17f–1 that independent accountants periodically verify the assets held by the custodian. Applicant submits that, because of the community of interest of the Partnerships and the CSFB Companies and applicant's commitment to arrange for an annual audit, compliance with these requirements of the rule would be unnecessarily burdensome and expensive.

10. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not ''interested persons'' (as defined in section 2(a)(19)) take certain actions and give certain approvals relating to fidelity bonding. Applicant requests relief from this requirement because all the directors of the entity controlling the General Partner will be interested persons, and the Partnerships therefore could not comply with this bonding requirement. Applicant believes that the community of interest among the directors and officers of the General Partner, some of whom will likely be Limited Partners, and other Limited Partners makes it unnecessary to comply with the requirements.

11. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written

code of ethics and that every access person of a registered investment company report personal securities transactions. Applicant requests an exemption from the provisions of rule 17j–1, except for the antifraud provisions of paragraph (a), because they were unnecessarily burdensome as applied to the Partnerships.

**Applicant's Conditions**

Applicant agrees that any order granting the requested relief shall be subject to the following conditions:

1. Each proposed transaction involving a Partnership otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 thereunder (the ''Section 17 Transactions'') will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Limited Partners and do not involve overreaching of the Partnership or its Limited Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Limited Partners, the Partnership's organizational documents, and the Partnership's reports to its Limited Partners. In addition, the General Partner will record and preserve a description of such affiliated transactions, its findings, the information or materials upon which its findings are based, and the basis for the findings. All such records will be maintained for the life of the Partnership and at least two years thereafter, and will be subject to examination by the SEC and its staff.[2]

2. In connection with Section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of any Partnership in any investment in which an Affiliated Co-Investor (as defined below) has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Affiliated Co-Investor. The term ''Affiliated Co-Investor'' means any person who is: (a) An affiliated person of the Partnership (other than an investment company or other fund which is offered, sponsored, advised or managed by a CSFB Company and which includes investors who are not CSFB Companies); (b) a CSFB Company; (c) an officer or director of a CSFB Company, or (d) a company in which the General Partner of such Partnership acts as general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) To its direct or indirect majority-owned subsidiary, to any company (a ''Parent'') of which the Affiliated Co-Investor is a direct or indirect majority-owned subsidiary, or to a direct or indirect majority-owned subsidiary of its Parent; (b) to immediate family members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family member; or (c) when the investment is comprised of securities that are (i) listed on a national securities exchange registered under section 6 of the 1934 Act; (ii) national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2–1 thereunder; or (iii) government securities as defined in section 2(a)(16) of the Act.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners, and each annual report of such Partnership required by the terms of the applicable partnership agreement, to be sent to the Limited Partners, and agree that all such records will be subject to examination by the SEC and its staff.[3]

5. The General Partner will send Partnership financial statements to each Limited Partner who had an interest in a Partnership at any time during the fiscal year then ended. Except for Partnerships formed to make a single investment, the statements will be audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partners will make a valuation or have a valuation made of all of the assets of the Partnership as of such fiscal year end. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the General Partner shall send a report to each person who was a Limited Partner at any time during the fiscal year then ended setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his or her federal and state income tax returns, and a report of the investment activities of the Partnership during each year.

6. Whenever a Partnership makes a purchase from or sale to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a CSFB Company director, officer, or employee, or person on retainer, such individual will not participate in the General Partner's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–23953 Filed 9–9–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Each partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[3] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22807; 812–10714]**

## Style Select Series, Inc., et al.; Notice of Application

September 3, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for an exemption under section 17(b) of the Investment Company Act of 1940 (the ''Act'') from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit a series of the

Style Select Series, Inc. to acquire all of the assets and assume all of the liabilities of a series of SunAmerica Equity Funds.

**APPLICANTS:** Style Select Series, Inc. (the ''Company''), on behalf of International Equity Portfolio (the ''Acquiring Fund''), and SunAmerica Equity Funds (the ''Trust''), on behalf of SunAmerica Global Balanced Fund (the ''Acquired Fund'').

**FILING DATES:** The application was filed on July 3, 1997, and amended on August 28, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, The SunAmerica Center, 733 Third Avenue, New York, New York 10017–3204.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

## Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company. The Acquiring Fund is one of four series of the Company. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Acquired is one of six series of the Trust. The Acquiring Fund and the Acquired Fund may be referred to individually as a ''Fund'' and collectively as the ''Funds.'' SunAmerica Asset Management Corp. (''SAAMCo''), an investment adviser registered under the Investment Advisers Act of 1940 and indirect wholly-owned subsidiary of SunAmerica Inc., serves as investment adviser to both Funds.

2. Each Fund offers Class A and Class B shares.[1] Class A and Class B shares of the Acquiring Fund are subject to sales charges and distribution fees on identical terms as Class A and Class B shares, respectively, of the Acquired Fund. Class A shares of each Fund are sold at the respective net asset value plus a sales charge imposed at the time of purchase, and Class B shares of each Fund are sold at the respective net asset value subject to a contingent deferred sales charge (''CDSC'') if redeemed within six years of the date of purchase.

3. On the Effective Date (as defined below) of the proposed reorganization (the ''Reorganization''), all of the assets and liabilities of the Acquired Fund will be transferred to the Acquiring Fund in exchange for Class A and Class B shares of the Acquiring Fund (the ''Issued Shares'') on the basis of relative net asset value. The Funds are seeking to consummate the Reorganization on or about September 12, 1997, and in any event no later than September 30, 1997, the fiscal year end of the Acquired Fund (the ''Effective Date'').

4. No sales charge will be imposed on the Issued Shares. Class B shares of each Fund automatically convert to Class A shares approximately seven years after purchase. A shareholder's holding period for Class B shares of the Acquiring Fund received in the Reorganization will include the shareholder's holding period for the Class B shares of the Acquired Fund exchanged therefor in the Reorganization, for purposes of determining any applicable CDSC upon redemption of such shares as well as when such shares convert to Class A shares.

5. SunAmerica Capital Services, Inc. (''SACS'' or the ''Distributor''), an affiliated person of SAAMCo, serves as distributor of both Funds. Each Fund has adopted distribution plans with respect to Class A and Class B shares (hereinafter referred to as the ''Class A Plans'' and the ''Class B Plans,'' and collectively, the ''Distribution Plans''). Under the Class A Plans, the Distributor may receive payments from a Fund at an annul rate of up to 0.10% of average daily net assets of such Fund's Class A shares. Under the Class B Plans, the Distributor may receive payments from a Fund at the annual rate of up to 0.75% of the average daily net assets of such Fund's Class B shares. It is possible that in any given year, the amount paid to the Distributor under the Class A plans or Class B Plans May exceed the Distributor's distribution costs as described above. The Distribution Plans provide that each class of shares of each Fund may also pay the Distributor an account maintenance and service fee of up to 0.25% of the aggregate average daily net assets of such class of shares.

6. The Acquiring Fund seeks long-term growth of capital by investing in equity securities of issuers in countries other than the United States. The Acquiring Fund will invest, under normal circumstances, at least 65% of its total assets in equity securities of issuers in at least three countries other than the United States. The Acquired Fund seeks capital appreciation while conserving principal by maintaining at all times a balanced portfolio of domestic and foreign stocks and bonds. Under normal circumstances, the Acquired Fund will invest at least: (a) 25% of its assets in global fixed-income senior securities; (b) 10% of its assets in domestic equity securities; and (c) 45% of its assets in foreign equity securities. In addition, it is anticipated that, under normal circumstances, the Acquired Fund will invest its assets in at least 10 countries at any time, although it is only required, under such circumstances, to maintain investments in at least three countries (one of which may be the United States).

7. Immediately after the Effective Date, (a) the Issued Shares received by the Acquired Fund pursuant to the Agreement and Plan of Reorganization (the ''Agreement'') will be distributed to the shareholders of the Acquired Fund in exchange for their Class A and Class B shares (''Exchange Shares'') in the Acquired Fund, such that each shareholder of the Acquired Fund will receive a number of full and fractional Issued Shares of the same class as, and having, at the Effective Date, an aggregate net asset value equal to the aggregate net asset value of the Exchanged Shares held by such shareholder on Effective Date at the time at which the Acquiring Fund ordinarily determines its net asset value (computed as of close of regular trading on the New York Stock Exchange), and (b) the Exchanged Shares will thereupon be canceled on the books of the Trust. The net asset value of the Issued Shares and of the Exchanged Shares will be calculated in accordance with the description of the net asset value in the then-current prospectus of the

[1] The Acquiring Fund also offers Class C shares, but they will not be issued in connection with the Reorganization (as defined below).

Acquiring Fund and Acquired Fund, respectively.

8. The distribution of the Issued Shares to the shareholders of the Acquired Fund will be accomplished by the establishment of an open account on the share records of the Acquiring Fund in the name of each shareholder of the Acquired Fund and representing the respective *pro rata* number of Issued Shares of the same class as, and equal in value to the value of, the Exchanged Shares held by such shareholder at the Effective Date. Exchanged Shares held in an open account with the transfer agent of the Acquired Fund will automatically become the number of Issued Shares provided for above and be held in an open account with the transfer agent of the Acquiring Fund.

9. The Agreement provides that the Acquired Fund will make one or more distributions to shareholders prior to the Effective Date which, together with all previous distributions, will have the effect of distributing to its Class A and B shareholders all of its net investment income and capital gains for the period from the close of its last fiscal year to the close of business on the Effective Date and any undistributed amounts thereof from the last fiscal year.

10. On May 22, 1997, the board of directors of the Company and the board of trustees of the Trust (collectively, the ''Boards''), including their disinterested directors and trustees, respectively, unanimously approved the Agreement. In deciding to approve the Agreement, the Boards concluded that the Reorganization would operate in the best interests of the relevant Fund and its shareholders and that the interests of the shareholders of each Fund would not be diluted as a result of the Reorganization.

11. In deciding to approve the Agreement and recommend it to the shareholders of the Acquired Fund, the Board of the Trust reviewed information related to the following factors: (1) Performance of the Funds; (2) Funds' fees and expenses; (3) Funds' growth rate and economies of scale; (4) the similarities of the Funds; (5) the tax-free nature of the transaction; and (6) lack of dilution of the interests of the Acquired Fund shareholders.

12. All costs of the Reorganization, including the costs of printing and mailing the prospectus/proxy statement and the costs of the special meeting of shareholders of the Acquired Fund scheduled for September 5, 1997 (the ''Meeting''), will be borne by SAAMCo and not by either Fund.

13. A definitive prospectus/proxy statement relating to the Meeting was filed with the SEC on July 8, 1997. Applicants sent the prospectus/proxy statement to shareholders of the Acquired Fund on July 8, 1997, for their approval at the Meeting.

14. The Agreement sets forth certain conditions to the consummation of the Reorganization, including the approval of the Reorganization by shareholders of the Acquired Fund, receipt of an opinion of counsel as to tax matters, and receipt of the SEC order requested in the application.

15. The Agreement and the Reorganization may be terminated by either Board notwithstanding approval by the shareholders of the Acquired Fund at any time prior to the Effective Date if circumstances should develop that, in the opinion of either Board, make proceeding with the Agreement inadvisable. Applicants agree not to make any material changes to the Agreement without prior SEC approval.

**Applicants' Legal Analysis**

1. Section 17(a) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to or purchasing any security from the company. Section 2(a)(3)(C) defines the term ''affiliated person'' of another person to include any person controlling, controlled by, or under common control with such person.

2. Rule 17a–8 exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Acquiring Fund and the Acquired Fund may be affiliated for reasons other than those set forth in the rule. Specifically, SunAmerica Inc. indirectly owns 100% of the outstanding voting securities of each of SAAMCo and SACS, the adviser to and distributor of, respectively, both Funds. As of June 30, 1997, the record date for the Meeting, SunAmerica Inc. also owns with the power to vote approximately 32% of the outstanding shares of the Acquiring Fund.[2] Because of this ownership, applicants believe that the Acquiring Fund may be deemed an affiliated person of an affiliated person of the Acquired Fund, and vice versa, for reasons not based solely on their common adviser.

4. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policies of each registered investment company concerned and the general purposes of the Act.

5. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b), in that the terms are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants note that each Board, including the non-interested trustees and directors, as applicable, reviewed the terms of the Reorganization as set forth in the Agreement, including the consideration to be paid or received, and found that participation in the Reorganization as contemplated by the Agreement is in the best interests of the Company, the Trust, and each Fund, and that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired Fund's assets and liabilities for the shares of the Acquiring Fund will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–23952 Filed 9–9–97; 8:45 am]

BILLIING CODE 8010–01–M

[2] SunAmerica Inc. does not own any of the outstanding shares of the Acquired Fund as of June 30, 1997.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39008; File No. SR–Amex–97–32]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Board Telephone Conferencing and Exchange Official Qualification Requirements

September 3, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 20, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'')

[1] 15 U.S.C. 78s(b)(1).

the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to amend Article II, Section 2 of the Exchange Constitution to (i) permit Governors to attend Board meetings by means of a conference telephone, and (ii) clarify that individuals who are employed by or associated with a member organization in a senior capacity may be appointed as Exchange Officials. The text of these statements may be examined at the places specified in Item IV below.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

In order to facilitate the fullest possible participation in board meetings, it is proposed that Article II, Section 2 of the Exchange Constitution be amended to provide that participation in a meeting of the Board of Governors by means of a conference telephone or similar communications equipment, which allows all persons participating in the meeting to hear each other at the same time, shall constitute presence in person at a meeting. New York law permits this procedure, but only if the appropriate authorization is contained in the corporate by-laws (in the case of the Exchange, its Constitution). It has become common in corporate America to provide for this convenience, and the New York Stock Exchange and most other self-regulatory organizations permit it as well.[2]

In addition, it is proposed that Article II, Section 2 of the Exchange Constitution be amended to clarify the description of the pool of individuals who are qualified to serve as Exchange Officials. Particularly as upstairs firms have grown and developed more complex organizations, the senior employees who are so well qualified to serve as Exchange Officials may not easily be described as ''principal executive officers'' or ''control persons.'' Accordingly, we would expand the Constitutional qualification to include individuals who are employed by or associated with a member organization in a senior capacity.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to promote just and equitable principles of trade and protect the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from August 20, 1997, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become operative pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[5]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principle office of the Amex. All submissions should refer to the file number SR–Amex–97–32 and should be submitted by October 1, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–23956 Filed 9–9–97; 8:45 am]

BILLING CODE 8010–01–M

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39010; File No. SR–CBOE–97–39]**

## Self-Regulatory Organizations; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Amendments to the Exchange's Telephone Solicitation Rule

September 3, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 25, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE or Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been

[2] See Article IV, Section 5 of the New York Stock Exchange Constitution.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 240.19b–4(e)(6).

[6] 17 CFR 200.30–3(a)(12).

prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Inc. (''CBOE'' or the ''Exchange'') proposes to amend Exchange Rules 9.21, Communications to Customers and 9.24, Telephone Solicitation. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Purpose

The purpose of the proposed rule change is to amend Exchange Rules 9.21 relating to communications to customers and Rule 9.24 pertaining to the conduct of CBOE members and persons associated with members (''associated persons'') who make unsolicited telephone calls to sell securities or related services (''telemarketing'' or ''cold-calling''). Rule 9.21(e) is being amended to include telemarketing scripts under the definition of ''sales literature.''

In December 1995, pursuant to the Telephone Consumer Protection Act (''TCPA''),[1] the CBOE adopted a ''telephone solicitation'' rule to implement certain rules of the Federal Communications Commission (''FCC Rules'')[2] that require persons who engage in telephone solicitations to sell products and services (''telemarketers'') to establish and maintain a list of persons who have requested that they not be contacted by the caller (a ''do-not-call'' list).[3] Under the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'') which became law in August 1994,[4] the Federal Trade Commission adopted detailed regulations (''FTC Rules'') to prohibit deceptive and abusive telemarketing acts and practices that became effective on December 31, 1995.[5] The FTC Rules, among other things, (i) require the maintenance of ''do-not-call'' lists and procedures, (ii) prohibit abusive, annoying, or harassing telemarketing calls, (iii) prohibit telemarketing calls before 8 a.m. or after 9 p.m., (iv) require a telemarketer to identify himself, the company for whom he or she works, and the purpose of the call, and (v) require express written authorization or other verifiable authorization from the customer before use of negotiable instruments called ''demand drafts.''[6]

Under the Telemarketing Act, the SEC is required either to promulgate or to required the self-regulatory organizations (''SROs'') to promulgate rules substantially similar to the FTC rules, unless the SEC determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or SEC rules already provide for such protection.[7] The proposed rule change amends CBOE Rule 9.24 and Interpretations thereunder in response to the Commission's request that major SROs promulgate rules substantially similar to applicable provisions of the FTC Rules. The CBOE believes that the proposed rule change addresses all relevant elements of the FTC Rules not already extensively regulated by existing federal securities laws and regulations or inapplicable to securities transactions.

Time Limitations and Disclosure

The proposed rule change amends Exchange Rule 9.24 by adding paragraph (a) to prohibit a member or associated person from making outbound telephone calls to a member of the public's residence for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location without that person's prior consent; and by adding paragraph (b) to require that the member or associated person promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, the telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.

Proposed paragraph (c) to Rule 9.24 creates exemptions from the time-of-day and disclosure requirements of paragraphs (a) and (b) for telephone calls by associated persons responsible for maintaining and servicing accounts of certain ''existing customers'' assigned to or under control of that associated person. Paragraph (c) defines ''existing customer'' as a customer for whom the broker or dealer, or a clearing broker or dealer on its behalf, carries an account. Proposed subparagraph (c)(1) exempts calls by the associated person to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an

[1] 47 U.S.C. 227.

[2] Pursuant to the TCPA, the FCC adopted rules in December 1992 regulating and limiting telemarketing activities. 57 FR 48333 (codified at 47 CFR 64.1200). With certain limited exceptions, the FCC Rules apply to all residential telephone solicitations, including those relating to securities transactions. *Id.* The term ''telephone solicitation'' refers to the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, other than with the called person's express invitation or permission, or to a person with whom the caller has an established business relationship, or by a tax-exempt non-profit organization. *Id.*

[3] Securities Exchange Act Release No. 36588 (December 13, 1995), 60 FR 65703 (December 20, 1995); order approving File No. SR–CBOE 95–63.

[4] 15 U.S.C. 6101–08.

[5] FTC Rules §§ 310.3–4.

[6] *Id.*

[7] In response, the National Association of Securities Dealers (''NASD''), the Municipal Securities Rulemaking Board (''MSRB''), the New York Stock Exchange (''NYSE''), the American Stock Exchange (''Amex''), and the Philadelphia Stock Exchange (''Phlx'') have adopted rules to curb abusive telemarketing practices. See Securities Exchange Act Release Nos. 38009 (Dec. 2, 1996), 61 FR 65625 (Dec. 13, 1996) (order approving File No. SR–NASD–96–28); 38053 (Dec. 16, 1996), 61 FR 68078 (Dec. 26, 1996) (order approving File No. SR–MSRB–96–06); 38638 (May 14, 1997), 62 FR 27823 (May 21, 1997) (order approving File No. SR–NYSE–97–07); 38724 (June 6, 1997), 62 FR 32390 (June 13, 1997) (order approving File No. SR–Amex–97–07); 38724 (June 6, 1997), 62 FR 32390 (June 13, 1997) (order approving File No. SR–Amex–97–17); and 38875 (July 25, 1997), 62 FR 41983 (August 4, 1997) (order approving file No. SR–Phlx–97–18).

The Commission has determined that the NASD Rule, the MSRB Rule, the NYSE Rule, the Amex Rule and the Phlx Rule, together with the Exchange Act and the Investment Advisers Act of 1940, the rules thereunder, and the other rules of the SROs, satisfy the requirements of the Telemarketing Act, because the applicable provisions of such laws and rules are substantially similar to the FTC Rules except for those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations or activities inapplicable to securities transactions. Securities Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1996). Accordingly, the Commission has determined that no additional rulemaking is required by it under the Telemarketing Act. *Id.* Notwithstanding this determination, the Commission still expects the remaining SROs to file similar proposals.

account under the control of or assigned to that associated person at the time of the transaction or deposit. Proposed subparagraph (c)(2) exempts calls by an associated person to an existing customer who, at any time, has effected a securities transaction in, or made a deposit of funds or securities into an account under the control of or assigned to the associated person at the time of the transaction or deposit, as long as the customer's account has earned interest or dividend income during the preceding twelve months. Each of these exemptions also permits calls by other associated persons acting at the direction of an associated person who is assigned to or controlling the account. Proposed paragraph (c)(3) exempts telephone calls to a broker or dealer. The proposed rule change also expressly clarifies that the scope of this rule is limited to the telemarketing calls described herein; the terms of the Rule do not otherwise expressly or by implication impose on members any additional requirements with respect to the relationship between a member and a customer or between an associated person and a customer.

Demand Draft Authorization and Recordkeeping

The proposed rule change adds paragraph (e) to Exchange Rule 9.24 to prohibit a member or associated person from obtaining from a customer or submitting for payment a check, draft, or other form of negotiable instrument drawn on a customer's checking, savings, share, or similar account (''demand draft'') without that person's express written authorization (which may include the customer's signature on the instrument), a record of which must be retained for at least three years. The proposal also states, however, that this provision does not require maintenance of copies of negotiable instruments signed by customers.

Telemarketing Scripts

The proposed rule change also amends Exchange Rule 9.21(e) to include telemarketing scripts under the definition of ''sales literature.'' Therefore, telmarketing scripts will be required to be retained for a period of three years.[8]

Statutory Basis

The CBOE believes that the proposed rule change is consistent with the provision of Section 6(b)(5) of the Act,[9] which requires that the Exchange adopt and amend its rules to promote just and equitable principles of trade and generally provide for the protection of customers and the public interest, in that the proposed rule change, by imposing time restriction and disclosure requirements, with certain exceptions, on members' telmarketing calls, and by requiring verifiable authorization from a customer for demand drafts, prevents members from engaging in certain deceptive and abusive telemarketing acts and practices while allowing for legitimate telemarketing practices. The CBOE also believes that the proposed rule change fulfills the mandate that SRO rules promulgated under the Telemarketing Act provide protection from deceptive and abusive telemarketing practices and are necessary and appropriate in the public interest and for the protection of investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submission should refer to File No. SR–CBOE–97–39 and should be submitted by October 1, 1997.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act[10] which requires, among other things, that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[11] The proposed rule change is consistent with these objectives in that it imposes time restriction and disclosure requirements, with certain exceptions, on members' telemarketing calls, requires verifiable authorization from a customer for demand drafts, and prevents members from engaging in certain deceptive and abusive telemarketing acts and practices while allowing for legitimate telemarketing activities.

The Commission believes that the addition of paragraph (a) to Exchange Rule 9.24, prohibiting a member or associated person from making outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person, is appropriate. The Commission notes that, by restricting the times during which a member or associated person may call a residence, the proposal furthers the interest of the public and provides for the protection of investors by preventing members and associated persons from engaging in unacceptable practices, such as persistently calling members of the public at unreasonable hours of the day and night.

The Commission also believes that the addition of paragraph (b) to Rule 9.24, requiring a member or associated person to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services, is appropriate. By requiring the caller to identify himself or herself and the purpose of the call, paragraph (b)

[8] See, CBOE Rule 9.21(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

assists in the prevention of fraudulent and manipulative acts and practices by providing investors with information necessary to make an informed decision when purchasing securities. Moreover, by requiring the associated persons to identify the firm for which he or she works and the telephone number or address at which the caller may be contacted, the Rule encourages responsible use of the telephone to market securities.

The Commission further believes that the addition of paragraph (c), which creates exemptions from the time-of-day disclosure requirements for telephone calls by associated persons, or other associated persons acting at the direction of such persons, to certain categories of ''existing customer'' is appropriate. The Commission believes it is appropriate to create an exemption for calls to customers with whom there are existing relationships in order to accommodate personal and timely contact with a broker who can be presumed to know when it is convenient for a customer to respond to telephone calls. Moreover, such an exemption also may be necessary to accommodate trading with customers in multiple time zones across the United States. The Commission, however, believes that the exemption from the time-of-day and disclosure requirements should be limited to calls to persons with whom the broker has a minimally active relationship. In this regard, the Commission believes that paragraph (c) achieves an appropriate balance between providing protection for the public and the members' interests in competing for customers.

Moreover, the Commission believes that the addition of paragraph (e) to Rule 9.24, requiring that a member or associated person obtain from a customer, and maintain for three years, express written authorization when submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share or similar account, is appropriate. The Commission notes that requiring a member or associated person to obtain express written authorization from a customer in the above-mentioned circumstances assists in the prevention of fraudulent and manipulative acts in that it reduces the opportunity for a member, or associated person to misappropriate customers' funds. In addition, the Commission believes that by requiring a member or associated person to retain the authorization for three years, subparagraph (e) protects investors and the public interest in that it provides interested parties with the ability to acquire information necessary to ensure that valid authorization was obtained for the transfer of a customer's funds for the purchase of a security.

The Commission believes that the amendment to paragraph (e) of Rule 9.21, adding telemarketing scripts to the definition of sales literature thereby requiring the retention of telemarketing scripts for a period of three years is appropriate. By requiring the retention of telemarketing scripts for three years, the Rule assists in the prevention of fraudulent and manipulative acts and practices and provides for the protection of the public in that interested parties will have the ability to acquire copies of the scripts used to solicit the purchase of securities to ensure that members and associated persons are not engaged in unacceptable telemarketing practices. Finally, the Commission believes that the proposed rule achieves a reasonable balance between the Commission's interest in preventing members from engaging in deceptive and abusive telemarketing acts and the members' interests in conducting legitimate telemarketing practices.

The Commission finds good cause for approving the proposed rule change, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The proposal is identical to the NASD and MSRB rules, which were published for comment and, subsequently, approved by the Commission. The approval of the CBOE's rules provides a consistent standard across the industry. In that regard, the Commission believes that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [13] that the proposed rule change (SR–CBOE–97–39) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–23954 Filed 9–9–97; 8:45 am]

BILLING CODE 8010–01–M

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78s(b)(2)

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39009; File No. SR–NYSE–96–16]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to Percentage Order Rules 13 and 123A.30

September 3, 1997.

### I. Introduction

On June 28, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to percentage orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 37495 (July 30, 1996), 61 FR 40699 (August 5, 1996). No comments were received on the proposal. This order approves the proposed rule change.

### II. Description

NYSE Rule 13 defines a percentage order as ''a limited price order to buy (or sell) fifty percent of the volume of a specified stock after its entry.'' A percentage order is essentially a memorandum entry left with a specialist, specifying the total number of shares to be bought or sold and the limit price, which becomes a ''live'' order capable of execution in one of two ways: (i) all or part of the order can be ''elected'' as a limit order on the specialist's book based on trades in the market; or (ii) all or part of the order can be ''converted'' into a limit order to make a bid or offer or to participate directly in a trade.

*A. The Election Process*

1. Current Practice

Under the election process, as trades occur at the percentage order's limit price or better, an equal number of shares of the percentage order are ''elected'' and become a limit order on the specialist's book. This limit order takes its place behind other limit orders on the specialist's book at the same price. The percentage order then is reduced by the number of elected shares until the entire order has been satisfied.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Currently, there are three types of percentage orders: last sale percentage orders, straight limit percentage orders,[3] and buy minus-sell plus percentage orders.[4] The Exchange has indicated that most percentage orders are entered as last sale percentage orders, meaning that they are elected to the book at the price of the elecing sale and may be executed at such price, or at a better price.[5] These orders may not, however, be executed at an inferior price to the electing sale even if that inferior price is still within the limit price on the order.

For example, assume that the specialist receives a last sale percentage order to purchase 5,000 shares with a limit price of 30. If a trade of 500 shares takes place at 29½, 500 shares of the percentage order would be placed on the specialist's book as a limit order at 29½. This order could be executed at a price of 29½ or lower, but could not be executed at a higher price, even though the limit price on the percentage order was 30.

2. Proposed Amendment to the Election Process

The Exchange is proposing to amend the definition of last sale percentage order in Rule 13 to provide that if the order is marked with the instruction ''last sale-cumulative volume,'' such orders may be re-entered on the specialist's book after their initial election at the price of subsequent transactions, as long as the price is within the limit price on the percentage order. Thus, in the example noted above, if there was a subsequent trade of 500 shares at 29⅝, 500 shares of a percentage order marked last sale-cumulative volume would be elected on to the specialist's book at 29⅝, and the 500 shares previously entered on to the book at 29½ would be cancelled and reentered at 29⅝, for a total of 1,000 shares of the percentage order on the book at 29⅝.[6] If the order were simply marked ''last sale,'' it would be handled as today under the current rule.

**B. The Conversion Process**

1. Current Practice

The second way that a percentage order can be activated into a limit order is through the conversion process. Most percentage orders contain the additional instruction ''CAP–D.'' ''CAP'' is an acronym meaning ''convert and parity,'' which instructs the specialist that he or she may convert all or a portion of the order into a limit order, and allows the specialist to be on parity with the converted percentage order, either to participate directly in a trade or to make a bid or offer (''bettering the market''). The ''D'' notation instructs the specialist that the order may be converted to participate in destabilizing transactions as well as stabilizing transactions.

The Exchange has stated that, as a practical matter, it views CAP–D orders as a necessary adjunct to the standard election procedures because they allow the specialist greater flexibility to match the order with other buying and selling interest in the market. CAP–D orders are subject to a number of restrictions intended to minimize the specialist's discretion in handling such orders.[7]

One such restriction codified in Rule 123A.30 provides that a percentage order may be converted into a limit order to make a bid (offer), but if a higher bid (lower offer) is subsequently made, the converted percentage order bid (offer) is treated as cancelled, and reverts to a memorandum entry with the specialist, which is subject to further conversion. This means that the bid or offer loses whatever priority it has with respect to other limit orders on the specialist's book.

For example, assume that the market is quoted 20–20¼, 10,000 shares bid and offered, with the bid at 20 representing 10,000 shares of a converted percentage order. Under the current rule, if the specialist then receives an order to buy 5,000 shares at 20, and an order to buy 200 shares at 20⅛, when the specialist changes the quotation to 20⅛–20¼, 200 shares bid and 10,000 offered, the converted percentage order bid of 20 for 10,000 is cancelled, and the 5,000 share order now has priority on the specialist's book at 20. If a transaction took place at 20⅛, and the quotation reverted to 20–20¼, the percentage order, although it can be re-converted to add to a bid at 20, would have lost its priority on the book.

2. Proposed Amendments to the Conversion Process

The Exchange is proposing to amend Rule 123A.30 to allow the converted percentage order to retain its priority on the book when a higher bid (lower offer) is made. However, if a transaction is effected at that higher bid (lower offer), and a bid or offer is made that is higher (lower) than the price of such transaction, the converted percentage order would be cancelled, subject to re-conversion. The order would not be cancelled, however, regardless of subsequent trades in the market, if it was converted at its maximum limit price.

In addition, the Exchange is proposing to amend Rule 123A.30 to include a provision that a specialist must document the status of a converted percentage order on the specialist's book as a limit order at the price it was converted.

**III. Discussion**

The Commission has considered carefully whether the NYSE's proposal is consistent with the Act. Specifically, the Commission has considered whether the proposal is consistent with the requirements set forth in Sections 6(b) and 11(b) of the Act.[8] In reviewing previous proposals involving percentage orders, the Commission has been concerned whether such orders provide the specialist with ''discretion'' in violation of Section 11(b) of the Act. Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of a specialist's dual role as agent and principal in executing stock transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist book and their handling of discretionary agency orders.[9] The Commission has interpreted this section to mean that all orders other than market or limit orders are discretionary and therefore cannot be accepted by a specialist.[10]

The Commission previously has determined that it is appropriate to treat

[3] A straight limit percentage order carries a limit price equal to the percentage order limit price.

[4] A buy minus-sell plus percentage order operates in the same fashion as a straight limit percentage order, except that it places the additional requirement that elected portions of buy (sell) percentage orders be elected at a price on minus or zero-minus ticks (plus or zero plus ticks) from the previous sale.

[5] The various types of percentage orders differ only in terms of execution, and not the process by which they are elected. See *supra* notes 3 and 4.

[6] In the event that a portion of a percentage order is elected at the same price as a previously elected, but still unexecuted, portion of the same percentage order, the previously-elected portion will neither be cancelled nor lose its priority on the limit order book. In such situations, however, the subsequently-elected portion will not gain priority over previously-entered orders on the book at that price. Telephone conversation between Donald Siemer, Director of Market Suveillance, NYSE, Mel Hanton, Senior Counsel, NYSE, and Jon Kroeper, Attorney, SEC, on August 30, 1996.

[7] See NYSE Rule 123A.30; Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (order approving amendment to Rule 123A.30 permitting conversion of percentage orders on destabilizing ticks under certain restrictions).

[8] 15 U.S.C. 78f(b) and 78k(b).

[9] See H. Rep. No. 1383, 73d Cong., 2d Sess. 22; S. Rep. 792, 73d Cong., 2d Sess. 18 (1934).

[10] See *e.g.*, SEC, Special Study of the Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess., Part 2, 72 (1963) (''Special Study'') (nothing that ''Section 11(b)* * * prohibits, without exception, a specialist's effecting any transaction except upon a market or limit order'').

percentage orders as equivalent to limit orders.[11] With regard to the conversion process in particular, while acknowledging that it permits specialists to employ their judgment to a certain extent, the Commission believed that the requirements imposed on the specialist when converting a percentage order for execution or quotation purposes provided sufficiently stringent guidelines to ensure that the specialist only will implement the conversion provisions in a manner consistent with his or her market making duties and Section 11(b).

Furthermore, the Commission previously has determined that the NYSE's percentage order rules are consistent with the standards set forth under Section 6(b)(5) of the Act. This section requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices. The Commission determined that the NYSE's percentage order rules contain various limiting and protective provisions, to ensure that such rules will not increase the possibility of specialist abuse of the market.

As discussed in greater detail below, the Commission finds that the proposed rule change, in adding a last sale-cumulative volume instruction to the election process and making a minor modification to the conversion process, does not adversely impact the protective scheme that has been incorporated into the percentage order rules. Accordingly, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) and 11(b) of the Act in that it neither increases specialists' ability to engage in fraudulent and manipulative practices nor allots discretion to specialists in their handling of percentage orders.

*A. Adoption of the Last Sale-Cumulative Volume Instruction*

Currently, portions of last sale percentage orders only may be elected to the specialist's book as limit orders at the price of the electing transaction. If the market subsequently moves away from this place, such orders will remain on the book without receiving an execution.[12] To address this situation, the Exchange has proposed to add a last sale-cumulative volume percentage order instruction option to the definition of last sale percentage order in NYSE Rule 13. If a percentage order entered with the specialist is marked ''last sale-cumulative volume,'' a previously-elected portion of a percentage order will be cancelled and re-entered at the price of subsequent transactions that are within the limit price of the percentage order.

The Commission believes that the adoption of the last sale-cumulative volume instruction is appropriate in that it comports with the underlying rationale for the percentage order rule; namely, to allow larger-sized orders to trade along with the trend of the market without requiring a floor broker to remain in the trading crowd to work the order. By cancelling and re-entering previously-elected portions of a last sale percentage order at the current market price, the proposed instruction will increase the likelihood that such orders will be executed in accordance with the trend of the market, instead of remaining on the specialist's book at an elected price from which the market has moved away. In the same regard, the Commission notes that the proposed instruction should facilitate the use of last sale percentage orders by floor brokers, as a floor broker will no longer have to take the active step of cancelling such orders from the specialist's book when the market moves away from the price of the electing transaction.[13] Further, the Commission believes that the proposed instruction is appropriate in that it should have the beneficial effect of increasing the possibility of interaction between last sale percentage orders and contrasided market interest.

In addition, the Commission finds that the proposed instruction is consistent with the Act in that it does not provide discretion to specialists in the handling of last sale percentage orders or increase the ability of specialists to engage in fraudulent or manipulative activity on the Exchange. In this regard, the process whereby last sale-cumulative volume percentage orders are elected and may be cancelled from the book and re-entered at the price of subsequent transactions is a purely mechanical one, determined solely by the application of the proposed instruction to the price of subsequent trades on the Exchange. The specialist is not provided with any discretion over the process of cancelling or re-entering elected orders.

Finally, the Commission believes that the proposed instruction adequately addresses the issue of the priority of pre-existing orders on the specialist's book to subsequently-elected portions of percentage orders. For example, assume that the market is quoted at 20–20½, 1000 shares bid and offered, the bid composed of (in order of priority) a 500 share customer order and 500 shares of an elected portion of a last sale-cumulative volume percentage order for 5000 shares with a limit price of 20½. The specialist then receives a customer limit order to buy 1000 shares at 20 and changes his or her quote to 20–20¼, 2000 shares bid and 1000 offered. If a market order to sell 500 shares then enters the market and is executed against the customer order to buy 500 shares at 20, an additional 500 shares of the percentage order will be elected to the specialist's book. However, this subsequently-elected portion of the percentage order will not be combined with the previously-elected portion (as would be the case if the transaction had occurred at a higher price than 20) and thereby gain priority over the customer limit order for 1000 shares at 20. Instead, the subsequently-elected portion will be placed at the bottom of the book, behind both the previously-elected portion and the customer order for 1000 shares in priority. As a result, pre-existing customer interest will maintain its priority over subsequently-elected percentage orders at the same price.

*B. Amendments to the Conversion Process*

Presently, a percentage order to buy (sell) that has been converted for purposes of bettering the existing quote must be cancelled and revert to a percentage order if a higher bid (lower offer) subsequently is made. As the Exchange has noted, while the converted percentage order would be subject to re-conversion at the same price, it would lose its priority on the specialist's book to other orders at that price. The proposed rule change would address this situation by requiring that such converted percentage orders remain in the specialist's book at their converted price unless a higher bid (lower offer) is made, a transaction is effected at that price, and a bid (offer) is made at a price higher (lower) than the price of the transaction. In such an instance, the converted percentage order would be cancelled, subject to reconversion.

The Commission believes that the proposed change to the conversion process is appropriate in that it adequately balances the interest of permitting converted percentage orders to retain their priority on the specialist's book over subsequently-arriving orders at the same price with that of removing

[11] See Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (File No. SR-NYSE–85–1).

[12] The Commission notes that the floor broker who entered the percentage order may instruct the specialist to cancel the elected order from the book at any time.

[13] The Commission notes, however, that a floor broker maintains his or her best execution obligations with regard to any percentage order that he or she may leave with a specialist.

such converted percentage orders from the book when conditions strongly indicate that the market has moved away from the conversion price.[14] Moreover, the Commission finds that the proposal may have the additional beneficial effect of increasing the transparency of the market. Specifically, the proposal will allow percentage orders to buy (sell) to remain on the book in the event of the entry of what may be a short-lived higher bid (lower offer) instead of reverting directly to a memorandum entry that the specialist may or may not decide to re-convert for quotation purposes.

Moreover, in approving the adoption of the CAP–D instruction, the Commission stated that it ''views as important the cancellation provision of the proposed bettering the market rule.'' [15] The significance of such a provision is to provide a cancellation mechanism that does not grant any discretion to the specialist when superior-priced same-sided interest enters the market. Accordingly, the Commission believes that the proposed procedure is an appropriate replacement for the existing cancellation provision in that it serves this same purpose.

Finally, the Exchange proposes to add to Rule 123A.30 a provision that a specialist must document the status of a converted percentage order on his or her book as a limit order at the price it was converted. The Commission finds that this provision is appropriate in that it provides specialists with a clearer statement of their existing responsibility to book converted percentage orders.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–96–16) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Secretary.*

[FR Doc. 97–23955 Filed 9–9–97; 8:45 am]

BILLING CODE 8010–01–M

[14] At the same time, it should be noted that the Commission has previously stated that a specialist can utilize the conversion process to enable the percentage order and the specialist trading for his or her own account to receive an execution while bypassing pre-existing trading crowd and limit order book interest. See SEC, Report on the Practice of Preferencing (April 11, 1997) at Part II.B.6.

[15] See Securities Exchange Act Release No. 24505, *supra* note 11.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection(ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 17, 1997 [62 FR 12577–12678].

**DATES:** Comments must be submitted on or before October 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Judith Street, ABC–100; Federal Aviation Administration; 800 Independence Avenue SW., Washington, DC 20591, telephone number (202) 267–9895.

**SUPPLEMENTARY INFORMATION:**

### Federal Aviation Administration (FAA)

*Title:* Pilot Records Improvement Act of 1996.

*OMB Control Number: 2120–0607.*

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Air Carriers gathering data on perspective pilots and the airmen/pilots applying for positions with the air carriers.

*Abstract:* Section 502 of the Pilot Records Improvement Act of 1996, Public Law 104–264, requires that an air carrier (as defined in 49 U.S.C. 40102(a)(2)), before hiring an individual as a pilot, request and receive FAA Records, Air Carrier and other records, and National Driver Register Records concerning that individual. The Administrator was directed to promulgate standard forms for use by air carriers in requesting those Pilot Records. Upon receipt of any requested records, an air carrier Amay use such records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot.A (Section 502(f)(11) of the Pilot Records Improvement Act of 1996, Pub. L. 104–264.)

*Need:* An air carrier may use the FAA forms (numbers TBD) to request the records of all applicants for the position of pilot. The information collected on the forms will be used to facilitate search and retrieval of the requested records. Air carriers then may use the records to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot.

Estimated Annual Burden Hours: 5,899 hours.

*Addressee:* Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer.

*Comments are Invited on:* whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on September 4, 1997.

**Vanester M. Williams,**

*Clearance Officer, United States Department of Transportation.*

[FR Doc. 97–23945 Filed 9–9–97; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petitions for Waivers of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received requests for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### Long Island Rail Road (Waiver Petition Docket Number LI–97–2)

The Long Island Rail Road (LIRR) seeks a waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR 229.29, for its M–1 and M–3 type MU locomotives. Specifically, LIRR wants to extend the required time intervals for cleaning, repairing, and testing of MU

locomotive brake equipment from 736 days to 1104 days.

Based on the results of Metro-North Railroad's (Metro-North) recently concluded test program, LIRR concurs with Metro-North's position that the test results demonstrate that extending the clean, oil, test, and stencil time interval to three years on MU locomotives can be accomplished without compromising brake and train/rail safety. LIRR declares that their railroad and Metro-North are sister agencies of the Metropolitan Transportation Authority of New York State, and that both railroads operate M–1 and M–3 MU type locomotives using identical WABCO RT–5A electro-pneumatic brake systems which perform in similar type service. Like Metro-North, LIRR's MU locomotive fleet is 100 percent air-dryer equipped. LIRR states that it uses one of the most efficient and effective air dryer/filtration systems available today, the Salem 976 Twin Tower, which greatly enhances the long-term reliability of the pneumatic components of the air brake system by virtually eliminating the introduction of water, oil, and other contaminates into the brake system.

**Golden Gate Railroad Museum (Waiver Petition Docket Number LI–97–3)**

The Golden Gate Railroad Museum (GGRM) seeks a waiver of compliance from 49 CFR 230.108(b), which requires that the entire surface of the main air reservoirs be hammer tested not less than once every 18 months, for its steam locomotive ι2472. GGRM would like to substitute ultrasonic testing of the reservoir at the time of hydrostatic testing, at least every 12 months. GGRM feels that ultrasonic testing will provide a more accurate evaluation of the reservoir's condition than hammer testing.

**Mid-Continent Railway Historical Society, Incorporated (Waiver Petition Docket Number LI–97–4)**

The Mid-Continent Railway Historical Society, Incorporated (MCRY) seeks a waiver of compliance from 49 CFR 230.110, which requires a steam locomotive's distributing or control valves, reducing valves, triple valves, straight-air double-check valves, and dirt collectors be cleaned as often as conditions require, but not less frequently than once every six months. MCRY requests that the requirement be extended to 12 months for steam locomotives MCRY 1385, a 4–6–0 built in 1907 by the American Locomotive Company, and MCRY 7, a 2–8–2 built in 1912 by Baldwin Locomotive Company. MCRY indicates that it operates the steam locomotives a total of seven months a year, including three days in the month of February.

**Private Car "Colonial Crafts" (Waiver Petition Docket Number PB–97–9)**

Rod and Ellen Fishburn seeks a waiver of compliance from certain sections of the Railroad Power Brakes and Drawbars Regulations, 49 CFR Part 232, regarding the private passenger coach they own called Colonial Crafts, PPCX 800061. In 1995, FRA granted the National Railroad Passenger Corporation (Amtrak) a waiver (Waiver Petition Docket Number PB–94–3) extending the frequency for the cleaning, oiling, testing and stenciling (COT&S) of passenger cars equipped with 26–C brake equipment from the required 36 months to 48 months. The Fishburns request that PPCX 800061 be under the maintenance conditions set forth in Waiver Docket Number PB–94–3. This would include a COT&S be performed as often as necessary to maintain the car in a safe and suitable condition for service, but not less frequently than once each 48 months. It would also require a single car test be performed on the car each time it is on a repair track, but not less frequently than once each 12 months.

The Fishburns declare that PPCX 800061 is maintained in accordance with Amtrak's standard maintenance procedures and is inspected annually by Amtrak inspectors.

**Lewis and Clark Railway Company (Waiver Petition Docket Number RSGM–96–7)**

The Lewis and Clark Railway Company seeks a waiver of compliance from 49 CFR 223.11(c), which requires that locomotives built or rebuilt prior to July 1, 1980, be equipped with certified glazing in all locomotive cab windows. The Lewis and Clark Railway Company requests a permanent waiver of compliance for two locomotives, LINC #81, built by Electro Motive Division (EMD) in 1954; and LINC #82, built by EMD in 1953, which were never equipped with certified glazing. The locomotives are utilized in passenger excursion and limited freight service. They are operated 30 miles between Chelatchie and Vancouver, Washington, and 3 miles on the Rey Branch—a section of the Burlington Northern Santa Fe—in the state of Washington at a speed not in excess of 15 mph.

**Madison Railroad (Waiver Petition Docket Number RSGM–96–14)**

The Madison Railroad (CMPA) seeks a waiver of compliance from 49 CFR 223.11(c) which requires that locomotives built or rebuilt prior to July 1, 1980, be equipped with certified glazing in all locomotive cab windows and 49 CFR 223.13 (a) and (b) which requires cabooses other than yard cabooses be equipped with FRA Type I glazing in forward and rearward locations, and side facing be equipped with glazing that meets the requirements of FRA Type II. CMPA requests a permanent waiver of compliance for one locomotive, CMPA 2013, built by Electro Motive Division locomotive works in 1951, which was never equipped with certified glazing and a caboose built between 1970–1977 by the Canadian National Railway and never equipped with FRA Type glazing. The Madison Railroad operates a twenty five mile short line. The locomotive will be utilized in freight service at speeds not to exceed 10 mph. The caboose is utilized as an office and is sometimes used as an inspection car.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–97–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C. on September 2, 1997.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 97–23866 Filed 9–9–97; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[FRA Docket Number H–97–6]**

### Petition for Waiver of Compliance

In accordance with Title 49 CFR 211.9 and 211.41, notice is hereby given that the Union Pacific Railroad (UP) has petitioned the Federal Railroad Administration (FRA) for exemption from or waiver of compliance with a requirement of its safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis of their request.

All communications concerning these proceedings should identify the appropriate waiver petition docket number (e.g., Waiver Petition Docket Number H–97–6) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street S.W., Mail Stop 10, Washington, D.C. 20590.

Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in Room 7051, 1120 Vermont Street, N.W., Washington, D.C.

The UP requests a waiver of compliance with certain provisions of FRA Safety Regulations (Hours of Service of Railroad Employees). The waiver requested seeks relief from 49 CFR 228.9(a)(1) for the UP to utilize a computerized system of recording hours of duty data. Section 228.9(a)(1) requires that records maintained under § 228 be signed by the employee whose time is being recorded, or in the case of train and engine crews, signed by the ranking crewmember. The UP seeks to establish a computerized system of recording hours of duty information which would not comply with the above requirements for a ''signature'' of the employee or ranking crewmember. The UP proposes that each employee will have his or her own personal identification number ''PIN'' which will remain confidential to the employee. When accessing the computer for input of the hours of service record, required by § 228.11, the ''PIN'' will not appear on the computer screen when the employee enters his or her number. The ''PIN'' is proposed to satisfy the signature requirements of the ''Hours of Service of Railroad Employees.'' The railroad maintains that the change is in the best interests of all parties, in that, it will reduce unnecessary paperwork and the costs associated therein while providing the railroad, its employees and the FRA with a superior level of information on a more timely basis than is currently available.

Issued in Washington, D.C. on September 2, 1997.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 97–23867 Filed 9–9–97; 8:45 am]

BILLING CODE 4910–06–M

## DEPARTMENT OF THE TREASURY

### Submission to OMB for Review; Comment Request

August 20, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0950.

*Form Number:* IRS Form 23.

*Type of Review:* Revision.

*Title:* Application for Enrollment to Practice Before the Internal Revenue Service.

*Description:* Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment.

*Respondents:* Individuals or households, Federal Government.

*Estimated Number of Respondents:* 2,400.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* Other (one-time filing).

*Estimated Total Reporting Burden:* 2,400 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 97–23868 Filed 9–9–97; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986):

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: September 3, 1997.

**Joseph Guttentag,**

*International Tax Counsel (Tax Policy).*

[FR Doc. 97–23963 Filed 9–9–97; 8:45 am]

BILLING CODE 4810–25–M

federal register

Wednesday
September 10, 1997

## Part II

# Office of Management and Budget

## Cost Principles for Educational Institutions; Notice

## OFFICE OF MANAGEMENT AND BUDGET

## Cost Principles for Educational Institutions

**AGENCY:** Office of Management and Budget.

**ACTION:** Proposed revisions to OMB Circular A–21.

**SUMMARY:** This notice proposes to revise Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions,'' by: (1) Establishing guidance for Federal cost negotiators to assure the reasonableness of facility costs, (2) implementing a new alternative approach to replace using special cost studies for the recovery of utility costs and deferring the elimination of special cost studies for the recovery of library costs, (3) providing additional guidance on the calculation of depreciation and use allowances on buildings and equipment, (4) proposing the use of and soliciting input on a standard format for facility and administrative rate proposal submissions, and (5) changing the distribution basis for the facilities and administrative cost application (from salaries and wages to modified total direct costs) at universities that use the simplified (short-form) method to calculate their facilities and administrative rate.

**DATE:** Comments on these proposals are due November 10, 1997.

**ADDRESSES:** Comments should be mailed to Gilbert Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503. Comments up to three pages in length may be submitted via facsimile to 202–395–4915. Electronic mail comments may be submitted via Internet to TRAN__H@A1.EOP.GOV. Please include the full body of electronic mail comments in the text and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

**FOR FURTHER INFORMATION:** Non-Federal organizations should contact the organization's cognizant Federal agency. Federal agencies should contact Gilbert Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose of Circular A–21

Office of Management and Budget (OMB) Circular A–21, ''Cost Principles for Educational Institutions,'' establishes principles for determining costs applicable to Federal grants, contracts, and other sponsored agreements with educational institutions.

### B. Recent Prior Revisions

Circular A–21 was last amended on May 8, 1996 (61 FR 20880). The 1996 revision incorporated four Cost Accounting Standards applicable to educational institutions, issued by the Cost Accounting Standards Board (CASB) on November 8, 1994 (59 FR 55746), and extended these standards to all sponsored agreements. The revision also: required certain large institutions to disclose their cost accounting practices by the submission of a Disclosure Statement prescribed by the CASB; amended the definition of equipment; eliminated in 1998 the use of special cost studies to allocate utility, library and student services costs; and, required the use of fixed facilities and administrative (F&A) cost rates for the life of sponsored agreements. Furthermore, the 1996 revision: established cost negotiation cognizant agency responsibilities; replaced the term ''indirect costs'' with ''facilities and administrative costs'' (to describe more accurately the various cost components of sponsored agreements); clarified the policy for a change from use allowance to depreciation; added criteria to interest allowability; and, disallowed tuition benefits for employee family members.

### C. Revisions Proposed for Comment

On February 6, 1995, OMB published two sets of proposed revisions (60 FR 7104 and 60 FR 7105). The first set was finalized in 1996, as described in Section B. The second set required further development prior to proposed implementation. The following proposed revisions address the second set of proposals made in 1995.

*1. Establish a Review Process To Ensure the Reasonableness of Facility Costs.*

To increase accountability in the research component of F&A costs and ensure that the cost of new research facilities passes a ''prudent person'' test of reasonableness, OMB proposes to establish a review process for research facility construction project costs. The proposal, which is detailed in a new Section F.2.b, would require Federal cost negotiators to determine whether the gross square foot (GSF) cost of new research facilities with an actual or estimated total cost of more than $10 million (or renovation costs of more than $4 million) meet the reasonableness test. The review process would apply to all new research building construction and renovation projects that are included in F&A rates negotiated after January 1, 2000. The review process would apply only to research buildings in which 40 percent or more of total space is devoted to federally-sponsored agreements.

Federal cost negotiators will rely on the most recent GSF data collected by the National Science Foundation (NSF) in response to its biennial survey, ''Science and Engineering Facilities at Colleges and Universities.'' Biennially, NSF will calculate the median cost per GSF figures for new research facilities and the median cost per GSF for renovations to research facilities. NSF will publish these results in its biennial survey report, which is publicly available. The review will apply to projects in the 50 states and the District of Columbia, and the benchmarks will be broken down into the ten Federal regions established by OMB Circular A–105, ''Standard Federal Regions,'' in April of 1974, minus the island territories (in addition, as explained below, Alaska and Hawaii raise unique issues).

The cost items that go into research facility costs have been found to be geographically sensitive and so the costs within contiguous and regional states should be comparable. NSF analyzed previous years' construction cost data by these longstanding Federal regions, and found that geography explained a significant degree of variation in cost-per-square-foot in university research facilities and that the Federal regional grouping provided a reasonable approximation of comparable construction costs. Further, the geographic regions established in Circular A–105 are used by the Department of Health and Human Services, which has negotiation cognizance over a majority of educational institutions, in their administration of grants and contracts and is familiar with the grantee community. Therefore, OMB proposes to use these ten regions for initiating the review process for a particular university facility costs. Given that other geographic groupings could be contemplated, OMB invites suggestions of other geographic groupings that might be demonstrated to be significant contributors to research facility costs. See proposed new Appendix C to Circular A–21.

In reviewing data pertaining to newly-constructed or renovated space, Federal cost negotiators will determine whether the facility's GSF cost exceeds 125 percent of the NSF median for the region in which the facility is located. No justification is necessary if the GSF cost is below the 125 percent benchmark. If the GSF cost exceeds the 125 percent benchmark, then institutions must submit detailed and quantitative justifications in order for such costs to be considered in rate negotiations. Acceptable justification should address one of the following:

(a) Lower life-cycle costs—The institution must demonstrate that it will incur higher up-front costs in constructing a facility in order to lower operating costs, and that the initial investment will benefit the institution and sponsored research agreements; or

(b) Unique research needs—The institution must demonstrate that unusual design or materials are required for the type of research. For example, biomedical research space costs are typically more expensive than the costs of other types of research space.

Additionally, given the different nature of construction costs in Alaska and Hawaii, a third acceptable justification for construction costs to exceed the benchmarks is that the project lies in one of those states.

If an institution's justification is accepted by the Federal cost negotiators, the full GSF cost amount may be included in the institution's calculation of its depreciation or use allowance. If an institution's justification is not deemed acceptable, the Federal cost negotiators will limit payment of facilities' depreciation or use allowance to the 125 percent benchmark rate for the region in which the facility is located. If an institution submits justification that justifies costs above the benchmark but justifies an amount less than actual or estimated costs, the Federal cost negotiators and institutions may arrive at an amount above 125 percent of the regional median but less than the actual or estimated costs that may be included in an institution's calculation of depreciation and use allowance.

*2. Implement an Alternative Approach for the Payment of Utility Costs and Defer the Elimination of Special Cost Studies for the Recovery of Library Costs*

The 1996 revision to Circular A–21 indicated that special cost studies will be eliminated starting with fiscal years beginning on or after July 1, 1998. OMB committed to developing an alternative approach to replace special cost studies for utility costs. The proposed alternative approach, as outlined in proposed new subsections F.4.c and d, provides a simple methodology to pay for increased utility costs related to research activities. The approach consists of adding a utility cost adjustment (UCA) of 1.3 percentage points to the university's overall F&A organized research rate calculated using the standard Circular A–21 allocation methods. The 1.3 percentage points represent the weighted average incremental rate that the Federal Government paid above the rate calculated using the standard allocation methodology to institutions that submitted in the past special utility studies for utility costs related to research activities. OMB will periodically reassess the UCA.

The UCA will initially be available, starting with fiscal years beginning on or after July 1, 1998, to the institutions that included special cost studies in their most recently submitted F&A proposal. The list of these institutions, based on review of Federal records, is provided in Attachment A to this proposal. OMB will develop criteria by which the institutions may be periodically recertified and by which other institutions could qualify for the UCA by July 1, 2002 and may change the UCA.

Further, due to the uncertain effects of recent and ongoing changes to university libraries and their services brought about by the increased use of the Internet and on-line research, OMB proposes to defer the elimination of special cost studies to support the allocation of library costs until OMB has an opportunity to evaluate the impact of these changes on the costs of library services benefitting organized research. See proposed revised subsection E.2.d.(5).

*3. Provide Additional Guidelines on Depreciation and Use Allowances*

In 1995, OMB stated its intention to examine and potentially revise the current useful life schedules for equipment, the cost of which is allocated to federally-sponsored agreements through a use allowance, to ensure that F&A recovery payments keep pace with the changing nature of scientific equipment. The use allowance methodology is based on an averaging concept that defines a 15-year useful life as an average life for all equipment at educational institutions. OMB's examination of this issue determined that the current 15-year useful life used in the computation of use allowance is, on balance, reasonable. That is, although the 15-year useful life may not match the expected life of some types of equipment (e.g., scientific and computer equipment), it remains appropriate considering the longer useful life of other types of equipment (e.g., furniture and fixtures). Therefore, OMB does not intend to revise the useful life for equipment for the use allowance method.

For those educational institutions that find that a shorter useful life for their equipment is more appropriate, Circular A–21 allows the use of depreciation for the recovery of equipment costs.

To provide more consistency in the treatment of use allowance and depreciation among educational institutions and Federal cognizant agencies, OMB proposes the following clarifications for the calculation of depreciation and use allowance:

(a) Use allowance recovery shall be limited to the acquisition costs of assets, or fair market value of donated assets at the time of donation (see proposed revised subsection J.2.c).

(b) Institutions that report depreciation in their financial statements must use the same depreciation methodology and useful lives for the F&A proposal (see proposed revised subsection J.12.b).

(c) Guidelines are proposed for the calculation of depreciation on buildings when depreciation is calculated on individual building components (see proposed revised subsection J.12.b). This revision establishes general categories of building components for the assignment of useful life.

(d) Gains and losses shall be computed on the disposition of depreciable assets (see proposed revised section J.33). This is how gains and losses are computed under other OMB cost principles found in Circulars A–87, ''Cost Principles for State, Local and Indian Tribal Governments,'' and A–122, ''Cost Principles for Non-Profit Organizations,'' in the treatment of gains or losses resulting from disposition of depreciable assets. Previously, Circular A–21 was silent on this issue because depreciation calculations were not required for educational institutions under generally accepted accounting principles (GAAP).

*4. Propose To Develop a Standard Format for the Ssubmission of F&A Proposals*

A standard format would assist institutions in completing their F&A rate proposal more efficiently and help the Federal cognizant agency review each proposal on a more consistent basis. It would also allow the Federal Government to collect improved information about F&A costs and to analyze F&A data that could be useful

in explaining variances in F&A rates among institutions. OMB intends to develop the standard format with assistance from Federal agencies, universities, and other interested parties, and then request comments under the Paperwork Reduction Act through a notice in the **Federal Register**. When completed, it will be included as an Appendix to the Circular and be available electronically.

*5. Change the distribution Basis for F&A Application (From Salaries and Wages to Modified Total Direct Costs) for Institutions That Use the Simplified Allocation Method*

This change, detailed in proposed revised Section H.2, would provide more comparability between F&A rates at small and large universities.

**D. Other Proposed Items for Consideration in the 1995 Notice**

OMB does not propose at this time to make revisions on two other items that were discussed in the 1995 **Federal Register** notice. They were: (1) to develop methods for direct charging of space costs, and (2) to develop new methods for charging specialized services facilities. The following discussion summarizes the result of OMB's analyses on these two items.

*1. Develop Methods for Direct Charging of Space Costs*

In February 1995, OMB stated its intention to develop and test a model for charging facilities costs directly to sponsored agreements. The objective of this study was to strengthen the incentive for universities to allocate space costs more efficiently. OMB asked the Federal Demonstration Project (FDP), which was created to test ways to improve flexibility and reduce administrative costs associated with grant-making, to perform the study. In October 1995, the FDP reported to OMB that it had developed three models of direct charging space costs to sponsored agreements. It also reported that, although direct charging is likely to produce more efficient use of space, it could also impose an excessive administrative burden on educational institutions and Federal agencies.

In recognition of the FDP's concerns, OMB is not formally pursuing this concept at the present time. However, OMB requests that Federal research agencies attempt to identify candidate institutions willing to pilot test direct charging. Federal agencies should work with pilot institutions to identify the best ways to quantify the efficiencies and administrative burdens direct charging creates and to see if an acceptable balance can be developed.

*2. Consider New Methods for Charging Specialized Service Facilities*

In February 1995, OMB stated its intention to develop a standard methodology for uniform treatment of specialized service facilities (e.g., animal care, computer centers and biohazard centers). OMB examined the issue and is not considering a change at this time in the current provisions for charging specialized service facilities costs.

OMB intended to identify the operating expenses of specialized service facilities that should be allocated to the direct costs and those to be included in a facility-specific rate or the general facilities cost pool. Based on OMB's analysis, costs associated with the specialized service facilities can be generally identified to these facilities. In accordance with current provisions of Circular A–21, these costs shall be directly assigned to the special service facilities and shall not be included in a facility-specific rate or the general facilities cost pool, unless the costs are immaterial or not readily identifiable. To allow the allocation of facilities and general administrative costs associated with specific specialized service facilities to a general facilities cost pool would violate the basic allocability principles of OMB cost principles Circulars (A–21, A–87 and A–122) and inequitably distribute costs to projects that do not benefit from the specialized service facilities.

**E. Clarification on the Use of Fixed Rates for the Life of the Sponsored Agreement**

On May 8, 1996, OMB revised Circular A–21 by adding section G.7, ''Fixed rates for the life of the sponsored agreement,'' (61 FR 20891) to require Federal agencies to ''use the negotiated rates for F&A costs in effect at the time of the initial award throughout the life of the sponsored agreement.'' In a response to public comments in the preamble section (61 FR 20884), OMB indicated that ''negotiated rates'' could include predetermined, fixed or provisional rates; and that provisional rates could be used for both funding and reimbursement throughout the life of the award.

OMB's intention in section G.7 was to require the Federal funding agencies to use the negotiated rates (final, fixed or predetermined rate) in effect at the time of the initial award to determine the total funding and the reimbursement of F&A costs of a multi-year project. Therefore, this notice is to clarify that ''negotiated rates,'' as mentioned in section G.7, do not include provisional rates.

**G. Edward DeSeve,**

*Controller.*

Circular A–21 is proposed to be revised as follows:

1. Replace subsection E.2.d.(5) with the following:

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section F shall not be used to distribute utility or student services costs. Instead, subsections F.4.c and F.4.d may be used in the recovery of utility costs.

2. Renumber subsection F.2.b to F.2.c, and change the reference in subsection F.4.b from ''subsection 2.b'' to ''subsection 2.c.''

3. Add new subsection F.2.b:

b. *Review of selected research facilities construction costs.* Cognizant agencies shall review the reasonableness of the construction costs, used in an institution's calculation of depreciation or use allowance, for all research-related capital projects that meet the criteria in subsection (1). The review requires Federal cost negotiators to determine, prior to including a new or renovated research facility's costs in an institution's F&A proposal, whether the cost per gross square foot (GSF) of new facilities is reasonable when compared with benchmarks for construction or renovation costs discussed in subsection (2). The goals of this objective review process are: to ensure that research facility costs charged to federally-sponsored agreements are reasonable, to increase accountability in the facilities component of F&A costs, and to encourage efficient construction and renovation of research facilities.

(1) All new research capital projects, on which design and construction begins after July 1, 1998, which are included in F&A rate proposals negotiated after January 1, 2000, shall be reviewed if they meet the following criteria:

(a) Facilities construction costs are greater than or equal to $10 million, or renovation costs greater than or equal to $4 million; and

(b) 40 percent or more of the facility's depreciation or use allowance is assigned to federally-sponsored agreements at any time during the life of the building.

(2) The benchmark is equal to 125 percent of the most recent cost per GSF data the National Science Foundation (NSF) collects in response to its biennial survey, ''Science and Engineering Facilities at Colleges and Universities.'' Using these survey data, NSF will

biennially calculate median cost per GSF for new research facilities constructed and median cost per GSF for renovation projects completed at colleges and universities. These benchmarks will be broken down according to ten Federal regions (see Appendix C of Circular A–21).

(3) No justification is necessary if the cost per GSF is below the 125 percent benchmark. If the cost per GSF exceeds 125 percent of the median cost for the region in which the facility of an institution is located, then the institution must submit detailed and quantitative justification in order for such costs to be considered in rate negotiation. While the submission can address other justifications, the institution must address whether the following justify the higher rates:

(a) Lower life-cycle costs—The institution incurred higher up-front costs in constructing a facility in order to lower operating costs. This initial investment will benefit the institution and sponsored research agreements; or

(b) Unique research needs—The unusual design or materials, if required for the type of research, that significantly increased the construction costs of the facility. For example, biomedical research space costs are typically more expensive than the costs for other types of research space, according to NSF facilities data.

Additionally, given the different nature of construction costs in Alaska and Hawaii, a third acceptable justification for construction costs to exceed the benchmarks is that the project lies in one of those states.

If the Federal cost negotiators determine that an institution's justification is acceptable, then the full GSF cost amount may be included in the institution's calculation of its depreciation or use allowance. If the Federal cost negotiators determine that an institution's justification is not acceptable, then the Federal cost negotiators will limit payment of facility's depreciation or use allowance to the 125 percent benchmark rate for the region in which the facility is located. If the Federal cost negotiators determine that an institution has submitted a justification that justifies costs above the benchmark but at an amount less than actual or estimated costs, then the Federal cost negotiators and institutions may arrive at an amount above 125 percent of the regional median but less than the actual or estimated costs that may be included in an institution's calculation of depreciation or use allowance.

4. Add new subsections F.4.c and F.4.d:

c. For F&A rates negotiated on or after July 1, 1998, an institution that previously employed a utility special cost study in its most recently negotiated F&A rate proposal in accordance with Section E.2.d, may add a utility cost adjustment (UCA) of 1.3 percentage points to its negotiated overall F&A rate for organized research. The allocation of utility costs to the benefitting functions shall otherwise be made in the same manner as described in subsection F.4.b. Beginning on July 1, 2002, Federal agencies shall reassess periodically the eligibility of institutions to receive the UCA.

d. Beginning on July 1, 2002, Federal agencies shall receive applications for utilization of the UCA from institutions not subject to the provisions of subsection F.4.c.

5. Replace subsection H.1.a with the following:

a. Where the total direct cost of work covered by Circular A–21 at an institution does not exceed $10 million in a fiscal year, the use of the simplified procedure described in subsection 2, may be used in determining allowable F&A costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information shall be utilized as basis for determining the F&A cost rate applicable to all sponsored agreements.

6. Replace subsection H.2.a with the following:

a. Establish the total costs incurred by the institution for the base period.

7. Replace subsection H.2.c with the following:

c. Establish the modified total direct cost distribution base, as defined in Section G.2.

8. Replace subsection H.2.e with the following:

e. Apply the F&A cost rate to the modified total direct costs for individual agreements to determine the amount of F&A costs allocable to such agreements.

9. Replace subsection J.12.b.(2) with the following:

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. The depreciation methods used to calculate the depreciation amounts for F&A rate purposes shall be the same methods used by the institution for its financial statements. This section does not apply to institutions (e.g., public institutions) which are not required to record depreciation by applicable generally accepted accounting principles (GAAP).

10. Replace subsection J.12.b.(4) with the following:

(4) When the depreciation method is used for buildings, a building may be divided into three general components. Each component item must then be depreciated over its estimated useful life. The three general components of a building are: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fumehoods, cold rooms and glassware/washers). When an institution elects to depreciate its buildings by its components, the same depreciation methods must be used for F&A purposes and financial statements purposes, as described in subsection b.(2). However, the entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life.

11. Replace subsection J.12.c.(1) with the following:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) shall be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. Use allowance recovery is limited to the acquisition costs of the assets. For donated assets, use allowance is limited to the fair market of the assets at the time of donation.

12. Replace section J.33 with the following:

33. Profits and losses on disposition of plant equipment or other capital assets.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall

not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under Section J.12.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in Section J.21.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a shall be excluded in computing Federal award costs.

c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.''

13. Add new Appendix C.

**Appendix C**

FEDERAL REGIONS FOR CONSTRUCTION BENCHMARK FACILITIES COSTS

| Region | States (and the District of Columbia) |
|---|---|
| I | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont. |
| II | New York and New Jersey. |
| III | Delaware, Maryland, Pennsylvania, Virginia, West Virginia and District of Columbia. |
| IV | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. |
| V | Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. |
| VI | Arkansas, Louisiana, New Mexico, Oklahoma and Texas. |
| VII | Iowa, Kansas, Missouri and Nebraska. |
| VIII | Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming. |
| IX | Arizona, California, Hawaii and Nevada. |
| X | Alaska, Idaho, Oregon and Washington. |

**Attachment A**

Listing of institutions that included special cost studies for the recovery of utility costs in their most recent F&A proposal submission based on a review of Federal records.

1. Boston College
2. Boston University
3. California Institute of Technology
4. Columbia University
5. Cornell University (Endowed)
6. Cornell University (Statutory)
7. Cornell University (Medical)
8. Emory University
9. Harvard Medical School
10. Harvard University
11. Johns Hopkins University
12. Massachusetts Institute of Technology
13. Medical University of South Carolina
14. Mount Sinai School of Medicine
15. New York University (except New York University Medical Center)
16. New York University Medical Center
17. North Carolina State University
18. Northeastern University
19. Oregon Health Sciences University
20. Oregon State University
21. Rice University
22. Rockefeller University
23. Stanford University
24. Tufts University
25. Tulane University
26. University of Arizona
27. University of CA, Berkeley
28. University of CA, Irvine
29. University of CA, Los Angeles
30. University of CA, San Diego
31. University of CA, San Francisco
32. University of Colorado, Health Sciences Center
33. University of Illinois, Urbana
34. University of Pennsylvania
35. University of Pittsburgh
36. University of Rochester
37. University of Southern California
38. University of Virginia
39. University of Michigan
40. University of Massachusetts, Medical Center
41. University of Medicine & Dentistry of New Jersey
42. University of Connecticut, Health Sciences Center
43. University of Vermont & State Agriculture College
44. University of Texas, Austin
45. University of Texas Southwestern Medical Center
46. Virginia Commonwealth University
47. Vanderbilt University
48. Washington University
49. Yale University
50. Yeshiva University

[FR Doc. 97–23878 Filed 9–9–97; 8:45 am]

BILLING CODE 3110–01–P

federal register

Wednesday
September 10, 1997

# Part III

## Department of the Treasury

**Office of the Comptroller of the Currency**

**12 CFR Part 25**

## Federal Reserve System

**12 CFR Parts 208 and 211**

## Federal Deposit Insurance Corporation

**12 CFR Part 369**

**Prohibition Against Use of Interstate Branches Primarily for Deposit Production; Joint Final Rule**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 25**

**[Docket No. 97–16]**

**RIN 1557–AB50**

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 208 and 211**

**[Regulations H and K; Docket No. R–0962]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 369**

**RIN 3064–AB97**

# Prohibition Against use of Interstate Branches Primarily for Deposit Production

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Joint final rule.

**SUMMARY:** The OCC, Board, and FDIC (collectively, agencies) are adopting uniform regulations to implement section 109 (section 109) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act). The final rule reflects comments received on the proposal and further internal consideration by the agencies.

As required by section 109, the final rule prohibits any bank from establishing or acquiring a branch or branches outside of its home state under the Interstate Act primarily for the purpose of deposit production, and provides guidelines for determining whether such bank is reasonably helping to meet the credit needs of the communities served by these branches.

**EFFECTIVE DATE:** October 10, 1997.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Neil M. Robinson, Senior Attorney, Community & Consumer Law Division (202) 874–5750; Kevin L. Lee, Senior Attorney, Enforcement and Compliance Division (202) 874–4800; Andrew T. Gutierrez, Attorney, Legislative and Regulatory Activities Division (202) 874–5090; or with respect to Federal branches of foreign banks, Maureen Cooney, Senior Attorney, International Activities Division (202) 874–0680.

*Board:* Lawranne Stewart, Senior Attorney, Legal Division (202) 452–3513; Robert L. McKague, Attorney, Legal Division (202) 452–2810; Shawn McNulty, Assistant Director, Division of Consumer and Community Affairs (202) 452–3946; or with respect to foreign banks, Kathleen M. O'Day, Associate General Counsel, Legal Division (202) 452–3786.

*FDIC:* Louise Kotoshirodo, Review Examiner, Division of Consumer Affairs (202) 942–3599; Doris L. Marsh, Examination Specialist, Division of Supervision (202) 898–8905; or Gladys Cruz Gallagher, Counsel, Legal Division (202) 898–3833.

**SUPPLEMENTARY INFORMATION:**

## Background

The Interstate Act [1] provides expanded authority for a domestic or foreign bank to establish or acquire a branch in a state other than the bank's home state (host state). Section 109 requires the agencies to prescribe uniform rules that prohibit the use of the authority under the Interstate Act to engage in interstate branching primarily for the purpose of deposit production.[2] The agencies must also provide guidelines to ensure that banks that operate such branches are reasonably helping to meet the credit needs of the communities served by the branches. Congress enacted section 109 to ensure that the new interstate branching authority provided by the Interstate Act would not result in the taking of deposits from a community without banks reasonably helping to meet the credit needs of that community. See H.R. Conf. Rep. No. 103–651, at 62 (1994).

## Overview of Proposed Rule and Comments

The agencies published a joint notice of proposed rulemaking on March 17, 1997 (62 FR 12730). The proposed rule applied to any bank that established or acquired, directly or indirectly, a branch under the authority of the Interstate Act or amendments to any other provision of law made by the Interstate Act. These branches were referred to as ''covered interstate branches.'' The proposed rule provided that, beginning no earlier than one year after a bank established or acquired a covered interstate branch, the appropriate agency would determine whether the bank satisfied a ''loan-to-deposit ratio screen'' based on reasonably available data.

The loan-to-deposit ratio screen compared the bank's loan-to-deposit ratio within the state where the bank's covered interstate branches were located (the bank's statewide loan-to-deposit ratio) [3] with the loan-to-deposit ratio of banks whose home state was that state (host state loan-to-deposit ratio). If the loan-to-deposit ratio screen indicated that the bank's statewide loan-to-deposit ratio was at least 50 percent of the host state loan-to-deposit ratio, no further analysis would be required. If, however, the appropriate agency determined that the bank's statewide loan-to-deposit ratio was less than 50 percent of the host state loan-to-deposit ratio, or determined that reasonably available data did not exist that permitted the agency to determine the bank's statewide loan-to-deposit ratio, the agency would perform a ''credit needs determination.''

Under the credit needs determination, the appropriate agency would review the loan portfolio of the bank and determine whether the bank was reasonably helping to meet the credit needs of the communities served by the bank in the host state. Consistent with section 109, the agencies would consider the following in making a credit needs determination: (1) Whether the covered interstate branches were formerly part of a failed or failing depository institution; (2) whether the covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business; (3) whether the covered interstate branches have a higher concentration of commercial or credit card lending, trust services, or other specialized activities; (4) the ratings received by the bank under the Community Reinvestment Act of 1977 (CRA); [4] (5) economic conditions, including the level of loan demand, within the communities served by the covered interstate branches; and (6) the safe and sound operation and condition of the bank.

A bank that failed the loan-to-deposit ratio screen and that received a determination that it was not reasonably helping to meet the credit needs of the communities served by the bank's interstate branches could be subject to section 109's sanctions after a hearing under section 8(h) of the Federal Deposit Insurance Act.[5]

[1] Pub. L. No. 103–328, 108 Stat. 2338.

[2] 12 U.S.C. 1835a.

[3] The proposed rule designated this ratio as the ''covered interstate branch loan-to-deposit ratio.'' The agencies changed the term because some commenters mistakenly interpreted the proposed rule as requiring each covered interstate branch to be tested under section 109's loan-to-deposit ratio screen. Section 109 requires consideration of a bank's statewide lending and deposit taking as determined by the appropriate agency.

[4] 12 U.S.C. 2901 *et seq.*

[5] 12 U.S.C. 1818(h).

The proposed rule also recognized that data necessary to perform the calculations required by the loan-to-deposit ratio screen may not be reasonably available without imposing additional regulatory burdens on banks. As discussed in the proposal, data that are currently reported have limited use in showing the geographic location of depositors and borrowers that is necessary for calculating the host state loan-to-deposit ratio. In addition, data storage practices vary widely from bank to bank, thereby making it difficult to determine how many multistate banks would have reasonably available data relevant to calculating the bank's statewide loan-to-deposit ratio in each state in which the bank has branches. The agencies requested comment on the data availability issues raised by section 109, including possible sources of relevant data that would be reasonably available to the agencies and appropriate methods of calculating the ratios. The agencies also requested comment on the proposed rule's approach of conducting a credit needs determination before applying the loan-to-deposit ratio screen, if data sufficient to calculate the bank's statewide loan-to-deposit ratio were not reasonably available.

Collectively, the agencies received 54 comments on the proposal. Comments were received from bank holding companies (11), individual banks (17), banking industry representatives (8), state bank commissioners and an association of state bank commissioners (7), consumer and community representatives (9), a nonbanking company (1), and an individual (1). Commenters supporting the proposal noted that the agencies were limited by section 109's prohibition against imposing new burdens on banks. Commenters opposing the proposal generally disagreed with the statutory scheme rather than its proposed implementation. Other commenters suggested modifications to the proposal. In developing the final rule, the agencies have carefully considered all comments in light of the language and legislative intent of section 109. For the reasons discussed in detail below, the agencies have adopted the rule substantially as proposed.

## Analysis of Comments and Final Rule

### *Interstate Branches Covered*

Several commenters raised a threshold issue based on a statement in the proposed rule concerning its coverage. The proposed rule stated that domestic banks may have branches located outside a bank's home state that are not within the scope of section 109 because they were not established or acquired pursuant to authority in the Interstate Act.[6] Several commenters disputed this statement, especially as applied to any bank not grandfathered under the McFadden Act of 1927.[7] These commenters cited, in particular, pending litigation challenging the legality of branches established under the main office relocation provision in the National Bank Act.[8] Commenters also stated that ''thousands'' of branches retained in transactions involving the relocation of a national bank's main office across state lines before June 1, 1997 (retained branches), may be among the bank branches deemed to be outside the coverage of section 109.

The coverage of the final rule coincides with the coverage of the Interstate Act thereby ensuring that the agencies will apply section 109 consistent with the Interstate Act. Consistent with section 109, and as stated in the proposed rule, the final rule applies to any branch (1) established or acquired outside a bank's home state pursuant to the Interstate Act or any amendment made by the Interstate Act to any other provision of law, or (2) that could not have been established or acquired outside a bank's home state but for the previous establishment or acquisition of a branch established pursuant to the Interstate Act.

The issue of the applicability of section 109 to branches in connection with a relocation under the National Bank Act is an issue within the jurisdiction of the OCC. The OCC notes that a Federal court of appeals recently issued an opinion in one pending case involving relocations under the National Bank Act.[9] The OCC believes that the commenters significantly overestimated the potential number of affected branches. The OCC estimates that by mid-1998, as banks establish or acquire branches pursuant to the Interstate Act, at most only a few hundred retained branches, owned by a small number of community or mid-sized banks, would remain and expects that the number of these retained branches will continue to decrease as the banks engage in transactions pursuant to the Interstate Act.

### *Data Availability*

Commenters described in detail the shortcomings of reported data for calculating the host state loan-to-deposit ratio.[10] Other commenters described the significant limitations on currently available data for providing the geographic location of a depositor or borrower that is necessary to calculate the bank's statewide loan-to-deposit ratio. A number of commenters also noted that sampling loan files to calculate this ratio could significantly increase regulatory burden by extending the duration of an examination and by requiring a bank to devote additional resources to the examination process.[11] Some commenters recommended, however, that the agencies require banks to report publicly additional data on the geographic locations of their loans and deposits, and requested that the agencies obtain sufficient data to calculate the bank's statewide loan-to-deposit ratio in all cases regardless of the regulatory burdens imposed.

The language of section 109 and its legislative history make clear that the agencies are to administer section 109 without imposing additional regulatory burdens on banks. Section 109 directs the agencies to calculate the bank's statewide loan-to-deposit ratio from reasonably available information, including an agency's sampling of the bank's loan files during an examination, or other available data. The agencies also are required to calculate the host state loan-to-deposit ratio as determinable from relevant sources. The House Conference Report states that ''[t]he Conferees do not intend that section 109 create any additional regulatory or paperwork burdens for any institution.'' H.R. Conf. Rep. No. 103–651, at 62 (1994). Therefore, consistent with the language and intent of section 109, the final rule does not impose additional data reporting requirements

[6] As noted in the proposed rule, limited branches (*i.e.*, offices that only accept internationally-related deposits permissible for an Edge Act corporation to accept) and agencies operated by foreign banks outside their home state are not subject to section 109.

[7] 12 U.S.C. 36.

[8] 12 U.S.C. 30.

[9] *See Ghiglieri* v. *Sun World Nat'l Ass'n*, Nos. 96–50847 and 96–50948 (5th Cir. July 22, 1997).

[10] The agencies have also reviewed a report by the Comptroller General of the United States entitled ''Bank Data: Material Loss of Oversight Information From Interstate Banking Is Unlikely'' (GAO/GGD/97049) (March 26, 1997).

[11] The commenters also confirmed the agencies' supervisory experience that sampling at a particular branch would not always produce reliable data because of wide variations in data collection practices. For example, a bank may book loans or deposits at locations outside the state where the borrowers or depositors are located. Many domestic and foreign institutions often consolidate commercial loans and deposits at a bank's main office, while mortgage lending may be booked at a mortgage lending subsidiary. Although the loans may have been made through a bank's covered interstate branch, they might not be booked at that branch.

nor does it generally require a bank to produce, or assist in producing, relevant data.

When data sufficient to calculate a bank's statewide loan-to-deposit ratio are not reasonably available, the agencies will conduct a credit needs determination as discussed below. The agencies believe that this approach accomplishes the purpose of section 109 without imposing additional burdens on the bank.

*Two-Step Analysis*

Commenters generally supported the approach of the appropriate agency conducting a credit needs determination if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio. Some commenters, however, suggested that a bank should be allowed to request a credit needs determination before the application of the loan-to-deposit ratio screen in a section 109 review. Other commenters stated that the credit needs determination should be abandoned in favor of testing only with the loan-to-deposit ratio screen.

After carefully considering the comments received on this point, the agencies have concluded that the Interstate Act requires the agencies to conduct a loan-to-deposit ratio screen—or to determine that sufficient data are not reasonably available—before making a credit needs determination.

Section 109 provides a two-step analysis to confirm a bank's compliance with its prohibition against deposit production offices. The first step attempts to measure compliance with the prescribed loan-to-deposit ratio screen, and the agencies will take into account all reasonably available data relevant to calculating the bank's statewide loan-to-deposit ratio on a case-by-case basis in order to determine whether that ratio can be calculated from such data.

Relevant data are data that, for example, geocode loans or that can be used to sort borrowers by zip codes. The agencies also will consider data that are reasonably determinable from available information, which would include the agency's sampling of the bank's loan files during an examination, or data that would be otherwise available from the bank, such as data currently required to be reported by the bank. In determining whether to sample a bank's loan files for the purposes of section 109 during an examination, the agencies will consider the regulatory burden imposed within the context of the examination. For example, an undue regulatory burden could result if a bank were required to expend resources that materially exceeded the resources required to produce data for sampling for other examination purposes. Similarly, sampling for the purpose of section 109 that would require a substantial extension of the scope or duration of the examination could also produce an undue regulatory burden on the bank. In such cases, the language and legislative intent of section 109 support proceeding to the second step in the two-step analysis.

If the appropriate agency determines that data relevant to calculating the bank's statewide loan-to-deposit ratio are not reasonably available without imposing an undue regulatory burden, or if the bank fails the loan-to-deposit ratio screen based on reasonably available data, in the second step the appropriate agency will look at the bank's activities through a credit needs determination. A credit needs determination therefore will be made in all cases in which the appropriate agency is unable to readily verify compliance with the section 109 loan-to-deposit ratio screen. Banks may provide the agencies with any relevant information, including loan data, if a credit needs determination is required.

If the appropriate agency has not determined the bank's statewide loan-to-deposit ratio and the bank subsequently receives an adverse credit needs determination, the agency will then apply the loan-to-deposit ratio screen. Applying the loan-to-deposit screen at this stage in the process is consistent with the agencies' statutory duty to determine a bank's compliance with section 109 and to seek sanctions against a bank that fails to comply, as appropriate. Since a bank must fail both the loan-to-deposit screen and the credit needs determination in order to be out of compliance with section 109, the agencies have an obligation to apply the loan-to-deposit screen before seeking sanctions. Obtaining sufficient data to calculate the bank's statewide loan-to-deposit ratio may require the appropriate agency to expand the scope and duration of its examination and may require the bank to assist the appropriate agency in producing data that may not be reasonably available. The agencies conclude that their statutory responsibility to ensure compliance with the statute after an adverse credit needs determination must outweigh consideration of regulatory burden that may be imposed on a bank in order to carry out the legislative purpose of section 109.

**Section 109 Loan-to-Deposit Ratios**

*A. Host State Loan-to-Deposit Ratio*

Relevant Data

The agencies will use the annual Summary of Deposits (prepared as of June 30) as the most reasonably available source of reported data on deposits. The agencies also will use quarterly Consolidated Reports of Condition and Income (Call Reports), which provide loan data for banks, as the most readily available source of reported data on loans.

The agencies recognize that Summary of Deposits and Call Report data do not provide precise information on the geographic location of depositors and borrowers for all the reasons detailed in the proposed rule and the comments. However, these data are the most useful data that are reasonably available at this time.

Method of Calculating

Some commenters suggested alternative ways of calculating the host state loan-to-deposit ratio. One commenter suggested using the unweighted average loan-to-deposit ratio [12] for all of the home state banks in the host state. Another commenter recommended using the average daily balance for loans instead of the actual amount of loans held at the end of the reporting period. One commenter suggested using third-quarter data for states with large rural and agricultural areas to capture the highest loan-to-deposit ratio. The agencies have also considered using peer group ratios based on the Uniform Bank Performance Reports, and separating the peer groups into quintiles so that the banks in the quintiles with unusually high or low loan-to-deposit ratios could be eliminated.

The agencies have determined to adopt the methodology discussed below which uses a weighted average loan-to-deposit ratio and second-quarter loan data generally. An unweighted average loan-to-deposit ratio for home state banks in the host state would fail to account for the greater lending and deposit-taking activities of the larger banks. In addition, third-quarter data for loans would not be appropriate because the Summary of Deposits data are only as of June 30, and loan and deposit data should be as of the same date. Moreover, available data are insufficient to

[12] The unweighted average loan-to-deposit ratio is calculated by adding the individual banks' loan-to-deposit ratios and dividing the result by the number of banks. A weighted average loan-to-deposit ratio is calculated by separately summing loans and deposits for all of the banks and then dividing the sum of loans by the sum of deposits.

calculate the average daily balance for all loan categories reported in the Call Reports, and there is no indication that the purpose of the section 109 screen was to capture the highest loan-to-deposit ratio of host state banks. Finally, methodologies based on peer groups require a sufficient number of institutions in each peer group, and it is likely that some states would not have sufficiently large peer groups, particularly for larger banks, to make a methodology using peer groups and quintiles feasible.

Several commenters raised concerns that data for specialized banks, which do not engage in traditional deposit taking or lending, would distort the host state loan-to-deposit ratio. As noted in the proposed rule, limited purpose banks, such as credit card banks, and wholesale banks could have very large loan portfolios, but few, if any, deposits. The agencies will therefore exclude data from banks designated as limited purpose or wholesale banks under the CRA regulations of the appropriate agency in calculating the loan-to-deposit ratio for the host state.[13]

In addition, certain lending activities of banks with foreign branches could distort the ratio. The agencies will use a measure of domestic loans that excludes loans to non-U.S. addressees and loans in foreign offices to the extent that these adjustments can be made to data in the Call Reports. A measure of domestic deposits from the Summary of Deposits does not include foreign deposits so that, to the maximum extent possible, domestic loans will be divided by domestic deposits.

Consideration of Multistate Banks

As discussed in the proposal, banks with branches outside their home state (multistate banks), in light of the data limitations imposed by section 109, pose particular problems for purposes of calculating host state loan-to-deposit ratios. Loan and deposit data from those banks could distort substantially the host state loan-to-deposit ratios, unless the data are adjusted to account for the banks' out-of-state branches' lending and deposit-taking activities. Because the Summary of Deposits contains data on a branch-by-branch basis, the agencies can account for the deposit-taking activities of out-of-state branches of multistate banks by using the aggregate deposit-taking activities of a multistate banks' home state branches only.

Accounting for the lending activities of out-of-state branches of multistate banks is more difficult. Neither the Call Report nor any other source of loan data contain data on a branch-by-branch or state-by-state basis. Thus, unless a bank maintains loan data on a state-by-state basis, there are no reasonably available data to calculate a multistate bank's home state lending activities.

In the proposal, the agencies suggested excluding multistate banks that have more than 50 percent of their branches outside their home state from the host state loan-to-deposit ratio. Recognizing the limitations in this approach, the agencies requested comment on this approach and on any approach that would more accurately reflect a multistate bank's home state activities.

In response to the agencies' request for comment, one commenter supported the exclusion of large multistate banks from the host state loan-to-deposit ratio because larger banks can maintain higher than average loan-to-deposit ratios by funding loans without using deposits. Another commenter suggested using a bank's deposits reported in its home state and a proportionate amount of the bank's loans based on the percentage of its total deposits that are reported in the bank's home state. A third commenter suggested that deposit and loan proration be based on the number of home state branches as a percentage of the bank's total number of branches.

On further consideration of this issue, the agencies have concluded that the host state loan-to-deposit ratio could be distorted substantially if multistate banks with 50 percent or more of their branches outside their home state are excluded, or if large multistate banks are excluded altogether. As interstate branching becomes more prevalent, some host states could eventually be left with few, if any, eligible host state banks[14] to include in the ratio. Moreover, including all loans and deposits of any multistate bank in calculating the host state loan-to-deposit ratio for its home state would give too much weight to that bank's lending and deposit-taking activities, and excluding all its loans and deposits would give no weight at all.

After carefully considering all comments, and given the statutory limitation on additional data collection, the agencies believe the best available approach requires assuming that a multistate bank's lending and deposit-taking activities in its home state correspond to its total lending and deposit-taking activities (*i.e.*, the percentage of its total loans that are in-state is the same as the percentage of its total deposits that are in-state). In particular, the agencies will calculate the percentage of a multistate bank's deposits that are attributable to in-state branches (as determined from the Summary of Deposits), and apply that percentage to the bank's total domestic loans (as determined from the Call Report) in order to determine a proxy for the bank's domestic loans attributable to that state. The agencies believe that this approach is preferable to including or excluding all loans and deposits of a multistate bank.

The agencies recognize that this method for calculating the host state loan-to-deposit ratio makes certain assumptions that may not be universally true. For example, intrastate banks do not necessarily make loans only to in-state borrowers. In addition, there is not necessarily a one-to-one correlation between in-state deposits and in-state loans for a multistate bank. Nevertheless, the data limitations imposed by section 109 necessitate these assumptions. The agencies will adjust this method as appropriate to account for changes in reporting requirements or additional sources of relevant data. The agencies also will continue to review ways to improve the calculation of the host state loan-to-deposit ratio. The agencies will make each state's host state loan-to-deposit ratio, and any changes in the way the ratio is calculated, publicly available.

*B. A Bank's Statewide Loan-to-Deposit Ratio*

Relevant Data

Several commenters suggested that a ''loan'' under the final rule should be defined more expansively than that term is defined in the Call Reports and should include, for example, loans originated and sold, securitized loans, investments in mortgage-backed securities and municipal bonds secured by loans, outstanding letters of credit, and loans booked through a bank's affiliates. Since banks generally do not report these data, or do not report them in a format that would provide a differentiation between in-state quantities and out-of-state quantities, the data could not be used in calculating the host state loan-to-deposit ratios. Using such data for a particular bank's statewide loan-to-deposit ratio, and not for the corresponding host state loan-to-deposit ratio, would distort the loan-to-deposit ratio screen. Consequently, the agencies will not consider these data in applying the loan-to-deposit ratio screen. However, the agencies may

[13] *See* 12 CFR 25.25 (OCC); 12 CFR 228.25 (Board); and 12 CFR 345.25 (FDIC).

[14] Host state banks are banks in a host state that have that state as their home state.

consider such data as appropriate in making a credit needs determination.

**Credit Needs Determination**

Consideration of CRA Rating

Some commenters maintained that a satisfactory or better CRA rating in a host state should provide a ''safe harbor'' from evaluation under section 109 in that state. Other commenters, however, believed that little, if any, reliance should be placed on CRA ratings because these commenters viewed CRA ratings as inflated and often out-of-date. One commenter suggested that a less than satisfactory CRA rating should automatically warrant an adverse credit needs determination.

The agencies believe that it is consistent with the language and intent of section 109 to carefully weigh the CRA rating of the bank in making a credit needs determination under the factors enumerated in section 109. Section 109 specifies the bank's CRA rating as a factor to be considered, and most of the other factors listed in section 109 are taken into account as part of the performance context evaluation pursuant to the agencies' CRA regulations.[15]

Moreover, section 110 of the Interstate Act (section 110)[16] requires the following separate written evaluations and CRA ratings of the institution's CRA performance (1) as a whole, (2) in each state in which it maintains a branch, and (3) in any multistate metropolitan area in which it maintains a branch in two or more states. In addition, the statewide written evaluation of a multistate bank must contain separate discussions of the institution's performance in any metropolitan area in the state in which it maintains a branch, as well as in the nonmetropolitan area of the state if a branch is maintained there. Accordingly, information from a CRA performance evaluation is particularly relevant in determining compliance with section 109 because it directly evaluates a bank's performance in helping to meet the credit needs of the communities it serves in a host state. As discussed below, the agencies expect to conduct the section 109 review in connection with an evaluation of the bank's CRA performance in the host state under section 110, as the appropriate agency deems necessary, thereby ensuring that the section 109 review will be based on current information.

In this light, the agencies expect that a credit needs determination for a bank with CRA performance ratings of ''satisfactory'' or ''outstanding'' in the host state (including any multistate metropolitan area) would be favorable. The agencies also expect that a credit needs determination for a bank with less than satisfactory ratings for CRA performance in the host state (including any multistate metropolitan area) would be adverse unless mitigated by the other factors enumerated in section 109.

Commenters requested that a credit needs determination only consider the lending component of a large bank's CRA rating, or that the lending component be given extra weight. The CRA rating for a large retail bank already weighs lending performance so that a bank may not receive an overall ''satisfactory'' CRA performance rating unless its lending performance component is rated at least ''satisfactory.'' Accordingly, the agencies are not adopting the suggested change.

Other Factors

Commenters also discussed other factors that section 109 requires the agencies to consider in making a credit needs determination. Some commenters suggested that, in considering economic conditions, the agencies should grant multistate banks greater leeway to anticipate economic trends in the host state and, if these trends are adverse, to reduce their efforts in helping to meet community credit needs. Another commenter suggested eliminating all factors that could be used to mitigate a poor CRA performance record. There also were requests for more guidance in the regulation on how the statutory factors would be considered in a credit needs determination.

The final rule incorporates the statutory factors as they are set forth in section 109. The agencies intend to apply these factors consistent with the plain meaning of the language used in section 109, as discussed above. With respect to institutions designated as wholesale or limited purpose banks under the CRA regulations, the agencies will consider the CRA performance for these banks under the special CRA performance test provided in the CRA regulations and the banks' specialized operations.

Banks Not Subject to CRA

Some entities that could be subject to section 109, including certain special purpose banks and uninsured branches of foreign banks,[17] are not evaluated for CRA performance by the agencies. Several commenters maintained that, in making a credit needs determination for such institutions, the agencies should apply the same standards that are applied to CRA-rated institutions. As discussed in the proposed rule, neither the language nor the legislative history of section 109 supports applying the CRA to these institutions. The agencies intend to use the CRA regulations as guidelines in making a credit needs determination for these institutions. The CRA regulations would provide only guidance to assess whether activities identified by the institution help to meet the community's credit needs, and would not obligate the institution to have a record of performance under the CRA or require that the institution pass any performance tests in the CRA regulations.

The agencies also intend, as proposed, to give substantial weight to the factor relating to specialized activities in making a credit needs determination for institutions not evaluated under the CRA. For example, most branches of foreign banks derive substantially all their deposits from wholesale deposit markets, which are generally national or international in scope.[18] This approach

[15] The CRA regulations specify that the agencies will evaluate a bank's performance in the context of a number of considerations, including the nature of the bank's product offerings and business strategy, the lending opportunities within a bank's assessment area, and any constraints on the bank such as the financial condition of the bank, the economic climate (national, regional and local), and safety and soundness limitations. See 12 CFR 25.21(b) (OCC); 12 CFR 228.21(b) (Board); and 12 CFR 345.21(b) (FDIC).

[16] 12 U.S.C. 2906(b) and (d).

[17] A special purpose bank that does not perform commercial or retail banking services by granting credit to the public in the ordinary course of business is not evaluated for CRA performance by the agencies. See 12 CFR 25.11(c)(3) (OCC); 12 CFR 228.11(c)(3) (Board); and 12 CFR 345.11(c)(3) (FDIC). In addition, the CRA does not apply to the branch of a foreign bank unless the branch is insured or results from an acquisition described in section 5(a)(8) of the International Banking Act (12 U.S.C. 3103(a)(8)) (IBA, 12 U.S.C. 3101 *et seq.*). See 12 CFR 25.11(c)(2) (OCC); 12 CFR 228.11(c)(2) (Board); and 12 CFR 345.11(c)(1) (FDIC).

[18] U.S. branches of foreign banks generally accept only uninsured wholesale deposits, and are not established primarily to gather deposits in their host state. In 1991, the Federal Deposit Insurance Corporation Improvement Act amended the IBA to prohibit U.S. branches of foreign banks from taking deposits in amounts of less than $100,000, other than through the relatively few branches that were already insured by the FDIC in 1991, or to the extent the OCC or the FDIC determine that the branch is not engaged in domestic retail deposit taking activities requiring deposit insurance protection. 12 U.S.C. 3104. Congress reaffirmed this prohibition in the Interstate Act, directing the OCC and the FDIC to revise their regulations to reduce further the opportunities for retail deposit-taking available to these branches.

*See* section 107(b) of the Interstate Act (12 U.S.C. 3104, Historical and Statutory Notes). As a general matter, interstate branches of foreign banks established under the Interstate Act therefore cannot take retail deposits or draw a significant level of deposits from retail-oriented deposit markets where the branches are located.

is consistent with section 109's overall purpose of preventing banks from using the Interstate Act to establish branches primarily to gather deposits in their host state without reasonably helping to meet the credit needs of the communities served by the bank in the host state.

Other Comments

Several commenters requested that the public, including representatives of community organizations and state bank commissioners, participate in a credit needs determination. Information provided to examiners through contacts with community representatives during a CRA examination or through other activities, and the bank's public comment file provide the agencies substantial information to assess the views of community organizations, government officials, and other interested persons. In addition, the agencies encourage written comments from the public about a bank's CRA performance at any time and publicly announce their CRA examination schedules. The agencies will carefully review information provided to examiners from community contacts or through other activities, and the public comment file in making a credit needs determination.

State bank commissioners also requested that the agencies consider compliance with state CRA laws in making a credit needs determination. The agencies will take into account state CRA compliance evaluations in a credit needs determination, as appropriate.

Some commenters requested the agencies to consider affiliate lending activities in making a credit needs determination while other commenters cautioned against giving too much consideration to affiliate lending activities. The agencies' CRA regulations permit a bank's affiliate lending to be considered as part of its CRA performance evaluation. Affiliate lending, therefore, would be relevant to a section 109 review to the extent that such lending is reflected in the bank's overall CRA performance rating.

**Sanctions**

Application of Loan-to-Deposit Ratio Screen

Before a bank could be sanctioned under section 109, the appropriate agency would be required to demonstrate that the bank failed to comply with the section 109 loan-to-deposit ratio screen and failed to reasonably help in meeting the credit needs of the bank's communities in the host state. Accordingly, the proposed rule required the agencies to determine a bank's compliance with the loan-to-deposit ratio screen. Some commenters suggested that the agencies could impose sanctions on a bank without verifying noncompliance with the loan-to-deposit ratio screen and other commenters contended that requiring such a verification would impose significant regulatory burdens. As previously discussed, the agencies have concluded that the two-step compliance analysis in section 109 requires the agencies to verify noncompliance with both steps before imposing sanctions, and that the agencies' responsibility to ensure compliance with section 109 after an adverse credit needs determination outweighs potential regulatory burdens associated with such a verification.

Consultation and Public Comment

If a bank fails both steps in the analysis, section 109's sanctions (1) allow the appropriate agency to order the closing of a covered interstate branch in the host state unless the bank provides reasonable assurances to the satisfaction of the agency that it has an acceptable plan that will reasonably help to meet the credit needs of the communities served by the bank, and (2) prohibit the bank from opening a new branch in the host state unless the bank provides reasonable assurances to the satisfaction of the agency that the bank will reasonably meet the credit needs of the community to be served by the new branch.[19]

State banking commissioners requested consultation before the agencies ordered a branch closing. Informal consultations with state banking regulators may assist the agencies in assessing the impact of branch closures, or a prohibition against new branches, on a state bank's ability to comply with state CRA laws. Informal consultations may also assist in assessing the bank's assurances to help meet credit needs in light of its record with state banking regulators for addressing supervisory concerns. Accordingly, the agencies intend to consult with state banking authorities before imposing sanctions, as appropriate.

Other commenters requested that the agencies solicit public comment on any plan proposed by the bank for meeting the credit needs of the community to avoid a branch closing order. The agencies will review any proposal by the bank in light of all comments from the public in the bank's community contacts portion of the CRA examination or through other activities, and the bank's public comment file. In addition, the agencies intend to provide an opportunity for public comment on nonconfidential portions of the bank's proposal.

**Timing of Review**

Some commenters stated that section 109 reviews and CRA performance examinations should be conducted at the same time. One commenter requested clarification that section 109 reviews would be conducted more than once, another commenter requested that section 109 reviews be conducted annually, and a third commenter recommended a two-year grace period before conducting the reviews.

As previously noted, the agencies intend to conduct section 109 reviews in connection with an evaluation of a multistate bank's CRA performance in a host state under section 110 of the Interstate Act. The appropriate agency will conduct a section 109 review of a multistate bank during the section 110 review, and a section 109 review of banks not subject to CRA, when the agency deems such a review to be necessary. The agencies will also coordinate with state banking authorities in applying section 109 to state-chartered branches of foreign banks that may be subject to section 109.

**Other Comments**

The agencies also received several recommendations that are inconsistent with section 109. These suggestions include: (1) Increasing the loan-to-deposit screen to more than 50 percent; (2) excluding a covered interstate branch if it does not solicit deposits from the public, or if it has a loan-to-deposit ratio in the host state comparable to the bank's overall loan-to-deposit ratio; (3) applying section 109 to all the bank's interstate branches in a host state rather than to ''covered interstate branches''; (4) applying the loan-to-deposit ratio to partial but geographically specific lending data (for example, home mortgages); and (5) exempting a bank that primarily lends in a particular state from compliance with the loan-to-deposit ratio screen and from the calculation of the host state loan-to-deposit ratio. The agencies believe that it would be inappropriate to implement these recommendations because they are inconsistent with the agencies' understanding of the language of section 109 and, accordingly, are not adopting them in the final rule.

[19] Section 109 requires the appropriate agency to issue a notice of intent to close a covered interstate branch to the bank and schedule a hearing in accordance with section 8(h) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)) before a branch can be closed.

**Regulatory Flexibility Act Analysis**

Consistent with the requirement that the agencies use only available information to conduct a section 109 review, the final rule does not impose any additional regulatory burden on banks beyond what is required by statute. In particular, the final rule does not impose any additional paperwork or reporting requirements. Thus, the final rule will not have a significant economic impact on a substantial number of small entities consistent with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Moreover, the final rule affects only banks that have branches in more than one state, which are primarily larger banks. However, the agencies note that some institutions with covered interstate branches may be subject to more extensive examinations or requests for information necessary to obtain the relevant data if the agencies determine to impose sanctions. As noted above, the agencies believe that this information is required by the two-step analysis under section 109 before sanctions can be imposed, and that there are no feasible alternatives to mitigate this potential burden.

**Paperwork Reduction Act**

The agencies have determined that the final rule would not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121) provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a federal agency issues a final rule. The agencies will file the appropriate reports with Congress and the GAO as required by SBREFA.

Because the Office of Management and Budget has determined that the uniform rule promulgated by the agencies does not constitute a ''major rule'' as defined by SBREFA, the final rule will take effect 30 days from publication in the **Federal Register**.

**OCC Executive Order 12866 Determination**

The OCC has determined that this final rule is not a significant regulatory action.

**OCC Unfunded Mandates Reform Act of 1995 Determination**

The OCC has determined that the final rule would not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

**List of Subjects**

*12 CFR Part 25*

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

*12 CFR Part 208*

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 211*

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

*12 CFR Part 369*

Banks, banking, Community development.

## Office of the Comptroller of the Currency

## 12 CFR Chapter I

**Authority and Issuance**

For the reasons set forth in the joint preamble, the Office of the Comptroller of the Currency amends part 25 of chapter I of title 12 of the Code of Federal Regulations as follows:

## PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

1. The part heading for part 25 is revised to read as set forth above.

2. The authority citation for part 25 is revised to read as follows:

**Authority:** 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

3. Section 25.11 is amended by revising paragraph (a)(1) to read as follows:

**§ 25.11 Authority, purpose, and scope.**

(a) *Authority and OMB control number*—(1) *Authority.* The authority for subparts A, B, C, D, and E is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

* * * * *

4. Part 25 is amended by adding a new subpart E to read as follows:

**Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production**

Sec.
25.61 Purpose and scope.
25.62 Definitions.
25.63 Loan-to-deposit ratio screen.
25.64 Credit needs determination.
25.65 Sanctions.

## Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production

**§ 25.61 Purpose and scope.**

(a) *Purpose.* The purpose of this subpart is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope.* (1) This subpart applies to any national bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch that is a Federal branch for a period of at least one year.

(2) This subpart describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

**§ 25.62 Definitions.**

For purposes of this subpart, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

(1) A national bank; and

(2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(j).

(b) *Covered interstate branch* means any branch of a national bank, and any Federal branch of a foreign bank, that:

(1) Is established or acquired outside the bank's home state pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(2) Could not have been established or acquired outside of the bank's home

state but for the establishment or acquisition of a branch described in paragraph (b)(1) of this section.

(c) *Federal branch* means Federal branch as that term is defined in 12 U.S.C. 3101(6) and 12 CFR 28.11(i).

(d) *Home state* means:

(1) With respect to a state bank, the state that chartered the bank;

(2) With respect to a national bank, the state in which the main office of the bank is located; and

(3) With respect to a foreign bank, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 28.11(o).

(e) *Host state* means a state in which a bank establishes or acquires a covered interstate branch.

(f) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(g) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(h) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the OCC.

**§ 25.63 Loan-to-deposit ratio screen.**

(a) *Application of screen.* Beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the OCC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host state loan-to-deposit ratio.

(b) *Results of screen.* (1) If the OCC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this subpart is required.

(2) If the OCC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the OCC will make a credit needs determination for the bank as provided in § 25.64.

**§ 25.64 Credit needs determination.**

(a) *In general.* The OCC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The OCC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The CRA ratings received by the bank, if any;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The OCC's CRA regulations (subparts A through D of this part) and interpretations of those regulations.

**§ 25.65 Sanctions.**

(a) *In general.* If the OCC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the OCC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the OCC's authority to order the bank to close a covered interstate branch, the OCC will issue to the bank a notice of the OCC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The OCC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 19.

Dated: September 4, 1997.

**Eugene A. Ludwig,**

*Comptroller of the Currency.*

## Federal Reserve System

## 12 CFR Chapter II

### Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends parts 208 and 211 of chapter II of title 12 of the Code of Federal Regulations as follows:

## PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

**Authority:** 12 U.S.C. 24, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1820(d)(9), 1823(j), 1828(o), 1831o, 1831p–1, 1835a, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318.

2. A new § 208.28 is added to subpart A to read as follows:

**§ 208.28 Prohibition against use of interstate branches primarily for deposit production.**

(a) *Purpose and scope*—(1) *Purpose.* The purpose of this section is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(2) *Scope.* (i) This section applies to any State member bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch licensed by a State for a period of at least one year.

(ii) This section describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other

provision of law, primarily for the purpose of deposit production.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Bank* means, unless the context indicates otherwise:

(i) A State member bank as that term is defined in 12 U.S.C. 1813(d)(2); and

(ii) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 211.21.

(2) *Covered interstate branch* means any branch of a State member bank, and any uninsured branch of a foreign bank licensed by a State, that:

(i) Is established or acquired outside the bank's home state pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home state but for the establishment or acquisition of a branch described in paragraph (b)(2)(i) of this section.

(3) *Home state* means:

(i) With respect to a state bank, the state that chartered the bank;

(ii) With respect to a national bank, the state in which the main office of the bank is located; and

(iii) With respect to a foreign bank, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 211.22.

(4) *Host state* means a state in which a bank establishes or acquires a covered interstate branch.

(5) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(6) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(7) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the Board.

(c) *Loan-to-deposit ratio screen*—(1) *Application of screen.* Beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the Board will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host state loan-to-deposit ratio.

(2) *Results of screen.* (i) If the Board determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this section is required.

(ii) If the Board determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the Board will make a credit needs determination for the bank as provided in paragraph (d) of this section.

(d) *Credit needs determination*—(1) *In general.* The Board will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(2) *Guidelines.* The Board will use the following considerations as guidelines when making the determination pursuant to paragraph (d)(1) of this section:

(i) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(ii) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(iii) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(iv) The Community Reinvestment Act ratings received by the bank, if any, under 12 U.S.C. 2901 *et seq.*;

(v) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(vi) The safe and sound operation and condition of the bank; and

(vii) The Board's Regulation BB—Community Reinvestment (12 CFR Part 228) and interpretations of that regulation.

(e) *Sanctions*—(1) *In general.* If the Board determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the Board:

(i) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the Board, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(ii) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the Board, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(2) *Notice prior to closure of a covered interstate branch.* Before exercising the Board's authority to order the bank to close a covered interstate branch, the Board will issue to the bank a notice of the Board's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(3) *Hearing.* The Board will conduct a hearing scheduled under paragraph (e)(2) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 263.

## PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for part 211 is revised to read as follows:

**Authority:** 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*

2. In § 211.22, a new paragraph (d) is added to read as follows:

### § 211.22 Interstate banking operations of foreign banking organizations

* * * * *

(d) *Prohibition against interstate deposit production offices.* A covered interstate branch of a foreign bank may not be used as a deposit production office in accordance with the provisions in § 208.28 of the Board's Regulation H (12 CFR 208.28).

By order of the Board of Governors of the Federal Reserve System, September 4, 1997.

**William W. Wiles,**

*Secretary of the Board.*

## Federal Deposit Insurance Corporation

## 12 CFR Chapter III

### Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation adds part 369 to chapter III of title 12 of the Code of Federal Regulations to read as follows:

## PART 369—PROHIBITION AGAINST USE OF INTERSTATE BRANCHES PRIMARILY FOR DEPOSIT PRODUCTION

Sec.
369.1 Purpose and scope.
369.2 Definitions.
369.3 Loan-to-deposit ratio screen.
369.4 Credit needs determination.
369.5 Sanctions.

**Authority:** 12 U.S.C. 1819 (Tenth) and 1835a.

### § 369.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope*—(1) This part applies to any State nonmember bank that has operated a covered interstate branch for a period of at least one year.

(2) This part describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the FDIC, the Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

### § 369.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

(1) A State nonmember bank; and

(2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 346.1(a).

(b) *Covered interstate branch* means any branch of a State nonmember bank, and any insured branch of a foreign bank licensed by a State, that:

(1) Is established or acquired outside the bank's home state pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(2) Could not have been established or acquired outside of the bank's home state but for the establishment or acquisition of a branch described in paragraph (b)(1) of this section.

(c) *Home state* means:

(1) With respect to a state bank, the state that chartered the bank;

(2) With respect to a national bank, the state in which the main office of the bank is located; and

(3) With respect to a foreign bank, the home state of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 346.1(j).

(d) *Host state* means a state in which a bank establishes or acquires a covered interstate branch.

(e) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(f) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(g) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the FDIC.

### § 369.3 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a bank establishes or acquires a covered interstate branch, the FDIC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host state loan-to-deposit ratio.

(b) *Results of screen.* (1) If the FDIC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this part is required.

(2) If the FDIC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the FDIC will make a credit needs determination for the bank as provided in § 369.4.

### § 369.4 Credit needs determination.

(a) *In general.* The FDIC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The FDIC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The Community Reinvestment Act (CRA) ratings received by the bank, if any, under 12 U.S.C. 2901 *et seq.*;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The FDIC's Community Reinvestment regulations (12 CFR Part 345) and interpretations of those regulations.

### § 369.5 Sanctions.

(a) *In general.* If the FDIC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the FDIC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the FDIC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the FDIC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the FDIC's authority to order the bank to close a covered interstate branch, the FDIC will issue to the bank a notice of the FDIC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The FDIC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 308.

By order of the Board of Directors.

Dated at Washington, D.C., this 26th day of August, 1997.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 97–23950 Filed 9–9–97; 8:45 am]

**BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P**

federal register

Wednesday
September 10, 1997

# Part IV

# Department of Housing and Urban Development

## 24 CFR Part 968

## Replacement Housing Factor in Modernization Funding; Proposed Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 968**

**[Docket No. FR–4125–P–01]**

**RIN 2577–AB71**

## Replacement Housing Factor in Modernization Funding

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule will revise HUD's regulations that govern the formula allocation of modernization funding under the Comprehensive Grant Program (CGP) to add to the formula a factor that will maintain, for five years, a portion of funding that otherwise would be lost by a CGP housing agency (HA) when the number of its public housing units are reduced as a result of demolition, disposition, or conversion. These added funds would be required to be used for approved replacement housing or for the accelerated renovation and reoccupancy of vacant but viable units. The rule would take effect in Federal Fiscal Year (FY) 1998, based on formula characteristics reported as of September 30, 1997.

Such funding will support replacement of about twenty percent of the public housing units lost to demolition, disposition, or conversion and not otherwise replaced. The added funds are needed for construction of replacement units in cities with tight housing markets, to capitalize on opportunities in vacated sites, and to increase community acceptance of demolition. Other possible sources of funding for actual replacement housing units (modernization funding and HOPE VI program grants) will not be able to serve fully the HAs with replacement housing needs that cannot be served fully by vouchers.

**DATES:** Comment due date: December 9, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** William Flood, Director, Office of Capital Improvements, Office of Public Housing Investments, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–1640, extension 4185. (This telephone number is not toll-free.) For hearing- and speech-impaired persons, this number may be accessed via text telephone by dialing the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Basis

The statutory foundation for modernization funding for the public housing program is section 14 of the United States Housing Act of 1937 (42 U.S.C. 1437l, *et seq.*). Using the formula authorized in section 14(k)(2), HUD computes the formula share of modernization funding for each HA eligible to participate in the CGP, i.e., an HA with 250 or more units.

Section 14(k)(2) prescribes certain formula factors and provides that the formula may be amended by the rulemaking process. Currently, the formula factors do not include a factor for replacement housing, which was not an eligible use of modernization funds when these factors were written.

Formerly, each public housing unit that was demolished or disposed of was required to be replaced with another unit. Recent amendments to the Act included suspension of the one-for-one replacement requirement. While this change is necessary, nationwide, by the end of FY 2000, an estimated 100,000 public housing units (of which about 60,000 were occupied as of FY 1996) are planned for demolition and disposition. In some cities, the number of such units can amount to between twenty-five and fifty percent of the city's annual total of vacant units available to low income households.

Traditionally, HUD has received appropriations for public housing development and HAs have used the development funds, in part, for replacement housing. Since FY 1995, however, Congress has not approved funding specifically for new public housing development. Currently, the only available sources of funding for construction of replacement housing are modernization funding and HOPE VI grants. Replacement housing was first authorized as an eligible cost of modernization funding in FY 1995. No change in the formula factors has taken place to reflect this new use of modernization funding; HAs can take advantage of this new flexibility only by diverting funds provided by the formula for developments other than the developments to be demolished. Similarly, HAs with a large backlog of vacant but viable units cannot take advantage of any savings in modernization funding resulting from demolition or disposition to bring additional vacant but viable units into occupancy.

Some HAs will have great difficulty restructuring their inventory and meeting local needs. Adding this replacement factor to the modernization formula will provide a share of modernization funds that is relatively constant that can be used for replacement of a portion of the non-viable units being demolished or sold. The Department is permitting either development of units (through construction or acquisition) or accelerated restoration of vacant units with the additional funding made available as a result of the replacement housing factor to give HAs the maximum amount of flexibility to use the means of replacing units given their own circumstances.

The number of replacement or restored vacant units that this funding will be able to support is about twenty percent of the number of units anticipated to be demolished, disposed of, or converted. Since about one third of the units being removed from an HA's inventory are typically vacant, the twenty percent replacement represents about thirty percent of the HA's occupied units.

Thus far, the Department has been able to provide either vouchers or newly acquired or constructed units, where appropriate, to replace roughly all units demolished or disposed of. However, replacement vouchers do not meet some local needs as well as hard replacement units do.

The Department believes that CGP HAs will be better able to restructure their inventories and more likely to take the needed steps to do so if they have available some funding for construction or acquisition of public housing replacement units irrespective of the HOPE VI process. Therefore, the Department has decided to exercise its authority (under 42 U.S.C. 1437l(2)(A)) to modify the formula for CGP funding, through notice and comment rulemaking, to take into account the need for some replacement units.

### II. Need for Change in the Formula

As recently as FY 1994, the public housing stock lost only two thousand units per year from demolition, disposition, and conversions. But from

FY 1997 to FY 2000, the Department estimates a reduction of about twenty thousand units per year from demolition, disposition, and conversions. This large reduction in units is expected to be concentrated among about forty HAs, almost all of which are large HAs, with 1250 or more units and with one or more developments with a high percentage of long-term vacancies. Fewer than ten (or one-quarter) of these forty HAs are expected to have over three-quarters of the reduction in units as a result of demolition, disposition, and conversion. Unless action is taken, the affected communities will not be able to capitalize on opportunities to rebuild at lower densities and in mixed-income settings on current sites. By allowing an HA with reduced public housing units to temporarily stabilize its funding if it uses the funding for replacement housing generated by the modernization replacement housing factor, the proposed rule will remedy these problems (at least in part) and make more acceptable the reduction of units resulting from the demolition, disposition, or conversion of non-viable units.

This proposed revision retains all aspects of the current CGP formula, including the phased-in reduction in units covered by the Annual Contributions Contract that is specifically stated in the statute and is implemented by § 968.103(k)(3). By adding a replacement housing factor to reflect the need for replacement housing following unit reduction, the revision mitigates the adverse impact of the phased-in reduction in units, because it amends the way the underlying formula is calculated and restores some of the formula funding share HAs would have received had no unit reduction occurred after October 1, 1996. Under the proposed revision, an HA cannot receive more than its pre-unit reduction funding share as a result of the replacement housing factor.

## III. Description of Replacement Housing Factor

A replacement housing factor is being added to both the backlog and accrual components of the formula for funding modernization activities under the CGP. The current formula provides, in accordance with the statute, that half of the formula is related to backlog needs, and the other half of the formula is related to accrual needs. Subject to the condition that an HA cannot receive more than its funding share before the application of the replacement housing factor, the five year adjustments for backlog and accrual need are calibrated so that an HA with units lost to demolition, disposition, or conversion will be able to fund about twenty percent of the public housing units (and about thirty percent of the occupied units) that will be lost. This percentage represents a significant amount of replacement housing but is low enough to ensure that funds will continue to be directed to pressing replacement housing needs.

The backlog and accrual need elements of the formula are now found at 24 CFR 968.103(e) and 968.103(f). This change is made to offset some of the loss of formula share in capital funding that would result from the described reduction of units that takes place after October 1, 1996. (As part of its CGP formula computations, HUD would compute the share and level of HA funding before the impact of the rule and the share and level of HA funding as a result of the rule that must be used for replacement housing.)

This rule adjusts the backlog need by adding 50 percent of the Total Development Cost (TDC) for a two-bedroom unit in a walk-up structure for the number of units to be demolished, disposed of, or converted, for the first five years after demolition, disposition, or conversion occurs. The rule adjusts the accrual need by adding two percent of the TDC for this type of unit for the number of units to be demolished, disposed of, or converted, for the first five years after demolition, disposition, or conversion. These modifications apply only if the reduced units are not otherwise receiving funding for replacement housing or vacancy renovation and if the funds attributable to this factor are used for approved replacement housing or vacancy renovation. Other modernization funds also may be used for replacement housing, in accordance with HUD Notice PIH 96–56 (HA). It is likely, however, that very few HAs would use modernization funding for this purpose if it would mean depriving other developments of modernization.

Four key features of the replacement housing factor should be noted. First, it does not support the continued operation of non-viable housing, because it is premised on non-viable units being reduced and the funding generated by the modernization replacement housing factor being used for replacement housing. Second, the affected HAs do not receive an additional funding share over their current share and might receive somewhat less, because the formula replacement factor cannot create shares of relative backlog need or relative accrual need that are greater than the relative shares before the removal of the units. Third, the offset is not a permanent hold harmless amount. After five years, the affected HAs will receive a share of funding based upon their reduced shares of backlog and accrual need without any replacement factor. Moreover, those units demolished, disposed of, or converted with replacement housing funds, such as public housing development, Major Rehabilitation of Obsolete Public Housing, or HOPE VI implementation grants, will not benefit from the replacement housing factor. (A demolished development with only partial replacement funding from a HOPE VI grant would get partial help from the modernization replacement housing factor.) Fourth, the replacement housing factor is expected to support replacement and accelerated renovation of vacant units of only a fraction of the original units.

In order to receive funding under the replacement housing factor, an HA must first request such funding when it updates its annual formula characteristics report for the formula run. Only units that are identified on the formula characteristics report as demolished, disposed of, or converted and that lower the number of HA formula units will be units eligible for the replacement factor. In its formula computations, HUD will determine the share and level of Comprehensive Grant formula funding that an HA will receive from the replacement factor. The HA will then budget the funds provided by the replacement factor as a major work category, including an implementation schedule, on the CGP Annual Statement. If the funding generated by the replacement factor is not used for replacement housing in a reasonable time, in accordance with already existing requirements (§§ 968.125 and 968.335(a)(3)), the affected HA will face appropriate corrective action, which ultimately may include recapture of the funds.

The following example shows how the factor would work.

*Example for the Formula Replacement Factor*

An HA that has 2,000 units is planning to demolish one of its developments. The development to be demolished has 200 units, and the demolition is not being funded by a grant that has a replacement component. The 1800 units that the HA is not going to demolish average a formula backlog need of $20,000 per unit and a formula accrual need of $1250 per unit—values that would have resulted from applying the unit-weighted characteristics of the

developments to the backlog and accrual formulas set out in the Comprehensive Grant program. The 200 units to be demolished have, in this hypothetical example, a formula backlog need of $40,000 per unit and a formula accrual need of $1500 per unit. Finally, the HA had total CIAP funding from 1984 to 1991 of $10 million, and the TDC of a two-bedroom walkup in its area is $64,000 per unit.

Before demolition, the HA's unfunded formula backlog need is $34.0 million, or $10 million of CIAP funding deducted from $44.0 million of backlog need (1800 units at $20,000 per unit plus 200 units at $40,000 per unit), and its total formula accrual need is $2.55 million (1800 units at $1250 per unit plus 200 units at $1500 per unit). Without a replacement factor, in accordance with the phased-in reduction of units provision of § 968.103(k)(3), its total formula backlog need within three years would fall to $26 million, or $10 million of CIAP funding deducted from $36.0 million of backlog need (1800 units at $20,000 per unit), and its formula accrual need would fall to $2.25 million (1800 units at $1250 per unit). In short, within three years, its formula backlog need would decline about 23.5 percent and its formula accrual need would decline about 11.8 percent. If it is assumed that the formula characteristics for all other HAs remain unchanged, then by the third year after the approved demolition, its formula share would decline about 17.7 percent relative to the starting point before demolition (the average of 23.5 percent and 11.8 percent).

In this example, a replacement factor for five years would value the demolished units at $32,000 per unit (half of the TDC of $64,000) in the backlog formula and at $1280 per unit (two percent of the TDC of $64,000) in the accrual formula. By the third year of the five year period, the uncapped formula backlog need of the HA with demolition would be $32.4 million, or the $10 million of CIAP funding deducted from $42.4 million of backlog need (1800 units times $20,000 per unit plus 200 units times $32,000 per unit). If the formula backlog need of all other HAs remains the same and if the backlog need falls below the original level (as in this example), the adjusted backlog need does not have to be capped in order that the HA with the demolished units not increase its share of formula backlog as a result of the replacement factor for demolition. By the third year of the five year period, the accrual need of the HA with demolition would be $2.506 million, or less than its amount and share before demolition. No capping for the accrual replacement factor is required in this example. With a replacement factor, the formula share of the HA for the aggregate five years would be somewhat less than its share before demolition. Still, its formula share for five years would be more than what the HA would have received had a replacement factor not been in place for the demolished units.

In the above example, the HA's formula share without a replacement factor for its demolished units would have been reduced 5.9 percent in the first year that the demolition took effect for CGP funding, 11.8 percent in the second year, and 17.7 percent the third through fifth years (and afterward). With a replacement factor, the HA's share would be reduced 1.1 percent the first year, 2.2 percent the second year, and 3.3 percent the third through fifth years, and then 17.7 percent thereafter. Suppose that the HA had received $6 million in CGP funds if no demolitions had occurred during the first through the fifth years. As a result of the replacement factor maintaining some of its share, the funds maintained for replacement housing would be $288,000 in the first year, $576,000 in the second year, and $864,000 in the third through fifth years—for a five-year total of $3,456,000.

## IV. Nationwide Impact

The Department estimates that the impact of this rule in the first year will be to maintain for eligible HAs about $20 million in funding for replacement housing that would otherwise be reallocated to other CGP HAs as a result of reduction in the number of the HA's units as a result of demolition, disposition, and conversion of non-viable units. Over the next five years, the impact might average $60 million per year. Of course, if there were no such incentive for HAs with non-viable units to demolish, dispose of, or convert and replace these units, they might not take such action, in which case their modernization funding shares might not have been reduced in the first place. Therefore, the true impact of the rule might be less than the above estimates.

## V. Findings and Certifications

### *A. Public Reporting Burden*

This proposed rule contains no new information collection requirements that would require review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520).

### *B. Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule only affects HAs with 250 or more units, eligible for formula funding under the CGP and primarily affects larger HAs, which have experienced the greatest unit reduction.

### *C. Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

### *D. Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have significant impact on States or their political subdivisions, or the relationship between the Federal Government and State and local governments, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. The rule merely preserves funding that would otherwise be lost to local housing agencies that have experienced significant loss of units.

### *E. Unfunded Mandates Reform Act*

The Secretary, in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

### *F. Regulatory Review*

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, not on the basis of impact in excess of $100 million but on the basis of its importance. Any changes made in this rule as a result of that review are clearly

identified in the docket file for this rule, which is available for public inspection in the HUD's Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

*Catalog*

The Catalog of Federal Domestic Assistance number for the program affected by this proposed rule is 14.850.

**List of Subjects in 24 CFR Part 968**

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, part 968 of title 24 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 968—PUBLIC HOUSING MODERNIZATION

1. The authority citation for part 968 continues to read as follows:

**Authority**: 42 U.S.C. 1437d, 1437*l*, and 3535(d).

2. Section 968.103 is amended as follows:

a. Paragraphs (e)(3) and (e)(4) are redesignated as paragraphs (e)(4) and (e)(5), respectively;

b. New paragraphs (e)(3) and (f)(4) are added; and

c. Paragraph (k)(1) is revised, to read as follows:

**§ 968.103 Allocation of funds under section 14.**

* * * * *

(e) * * *

(3) *Replacement factor to reflect backlog need for developments with demolition, disposition, or conversion occurring on or after October 1, 1996.* (i) For PHAs that have a reduction in units attributable to demolition, disposition, or conversion of units occurring on or after October 1, 1996, and such reduction lowers the formula unit count for the Comprehensive Grant formula calculations, a factor will be added for the first five years after such reduction that consists of 50 percent of the published Total Development Cost for the period April 3, 1996 through April 30, 1997, for a two-bedroom unit in a walkup type structure, times the number of units to be demolished or disposed of. The total relative backlog need of the PHA resulting from application of this replacement factor cannot exceed the share it would have had if the demolition, disposition, or conversion had not taken place.

(ii) A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(A) The PHA is not receiving funding for replacement housing for the reduced number of units under the public housing development, Major Reconstruction of Obsolete Public Housing, or HOPE VI programs; and

(B) The restored funding that results from the use of the replacement factor is used to provide replacement housing or accelerated renovation of vacant but viable units, in accordance with the HA's five-year action plan, approved by HUD (see § 968.315).

(iii) If the PHA does not use the restored funding that results from the use of the replacement factor to provide replacement housing or renovated vacant units in a timely fashion, in accordance with § 968.125, and make reasonable progress on such use of the funding, in accordance with § 968.335(a)(3), HUD may require appropriate corrective action under § 968.335 or may recapture and reallocate the funds.

* * * * *

(f) * * *

(4) *Replacement factor to reflect accrual need for developments with demolition, disposition, or conversion occurring on or after October 1, 1996.* (i) For PHAs that have a reduction in units attributable to demolition or disposition, disposition, or conversion of units occurring on or after October 1, 1996, and such reduction lowers the formula unit count for the Comprehensive Grant formula calculations, a factor will be added for the first five years after such reduction that consists of two percent of the published Total Development Cost for the period April 3, 1996–April 30, 1997, for a two-bedroom unit in a walkup type structure times the number of units to be demolished, disposed of, or converted. The total relative accrual need of the PHA resulting from application of this replacement factor cannot exceed the share it would have had if the demolition, disposition, or conversion had not taken place.

(ii) A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(A) The PHA is not receiving funding for replacement housing for the reduced number of units under the public housing development, Major Reconstruction of Obsolete Public Housing, or HOPE VI programs; and

(B) The restored funding that results from the use of the replacement factor is used to provide replacement housing or accelerated renovation of vacant but viable units, in accordance with the HA's five-year action plan, approved by HUD (see § 968.315).

(iii) If the PHA does not use the restored funding that results from the use of the replacement factor to provide replacement housing in a timely fashion, in accordance with § 968.125, and make reasonable progress on such use of the funding, in accordance with § 968.335(a)(3), HUD may require appropriate corrective action under § 968.335 or recapture and reallocate the funds.

* * * * *

(k) *Demolition, disposition and conversion of units.* (1) *General*— (i) *One percent limit.* Where an existing unit under an ACC is demolished, disposed of, or converted into a larger or smaller unit, including the substantial rehabilitation of a Mutual Help or Turnkey III unit, HUD shall not adjust the amount the PHA or IHA receives under the formula, unless more than one percent of the units are affected on a cumulative basis. Where more than one percent of the existing units are demolished, disposed of, or converted, HUD shall reduce the formula amount for the PHA or IHA over a 3-year period to reflect removal of the units from the ACC.

(ii) *When a change in number of units is triggered.* A change in the number of units under ACC is counted when one of the following occurs:

(A) Completion of approved work to convert units to different sizes, resulting in an increase or decrease in the number of units;

(B) Execution of a sales contract for a disposition;

(C) Start of approved work for a demolition; or

(D) Conveyance of a Mutual Help, Turnkey III, or rental unit.

* * * * *

Dated: September 4, 1997.

**Kevin Emanuel Marchman,**

*Acting Assistant Secretary for Public and Indian Housing.*

[FR Doc. 97–23907 Filed 9–9–97; 8:45 am]

BILLING CODE 4210–33–P

# Reader Aids

**Federal Register**

Vol. 62, No. 175

Wednesday, September 10, 1997

## CUSTOMER SERVICE AND INFORMATION

**Federal Register/Code of Federal Regulations**

General Information, indexes and other finding aids **202–523–5227**

E-mail **info@fedreg.nara.gov**

**Laws**

For additional information **523–5227**

**Presidential Documents**

Executive orders and proclamations **523–5227**

**The United States Government Manual** **523–5227**

**Other Services**

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

## ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

## PUBLIC LAWS ELECTRONIC NOTIFICATION SERVICE

Free electronic mail notification of newly enacted Public Law is now available. To subscribe, send E-mail to **PENS@GPO.GOV** with the message: *SUBSCRIBE PENS-L FIRSTNAME LASTNAME.*

## FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

**NOTE:** YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

## FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

46175–46430 ..... 2
46431–46664 ..... 3
46665–46866 ..... 4
46867–47136 ..... 5
47137–47358 ..... 8
47359–47550 ..... 9
47551–47744 .....10

## CFR PARTS AFFECTED DURING SEPTEMBER

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.

**5 CFR**

338 .....46553
2423 .....46175
2429 .....46175
**Proposed Rules:**
532 .....46221

**7 CFR**

301 .....47551, 47553
500 .....46431
1011 .....46665
1205 .....46412
1207 .....46175
1610 .....46867
1735 .....46867
1737 .....46867
1739 .....46867
1746 .....46867
**Proposed Rules:**
Ch. XIII .....47156
1962 .....47384
1965 .....47384
1980 .....47384

**8 CFR**

274a .....46553

**9 CFR**

94 .....46179
96 .....46179
**Proposed Rules:**
319 .....46450

**10 CFR**

50 .....47268
207 .....46181
218 .....46181
430 .....46181, 47536
490 .....46181
501 .....46181
601 .....46181
820 .....46181
1013 .....46181
1017 .....46181
1050 .....46181
**Proposed Rules:**
9 .....46922
50 .....47268, 47588

**12 CFR**

25 .....47728
208 .....47728
211 .....47728
369 .....47728
936 .....46872

**14 CFR**

11 .....46864
13 .....46864
15 .....46864
39 .....46184, 46186, 46189, 47359, 47360, 47362, 47364
71 .....46873, 46874, 47366
185 .....46864
**Proposed Rules:**
39 .....46221
255 .....47606

**15 CFR**

922 .....47137
**Proposed Rules:**
280 .....47240
911 .....47388
922 .....47611

**16 CFR**

1000 .....46666
1014 .....46666
1015 .....46192
1021 .....46666
1051 .....46666
1115 .....46666
1211 .....46666
1402 .....46666
1406 .....46666
1500 .....46666
1502 .....46666
1700 .....46666
1702 .....46666

**17 CFR**

200 .....47367
**Proposed Rules:**
1 .....47612
30 .....47612
33 .....47612
190 .....47612

**19 CFR**

7 .....46433
10 .....46433, 46553
148 .....46433
178 .....46433
**Proposed Rules:**
351 .....46451

**20 CFR**

222 .....47137
229 .....47137
**Proposed Rules:**
404 .....46682

**21 CFR**

50 .....46198
56 .....46198
312 .....46198, 46875
314 .....46198
520 .....46668
558 .....46443
601 .....46198
812 .....46198
814 .....46198
**Proposed Rules:**
310 .....46223, 47532

334 ....46223
884 ....46686

**22 CFR**

514 ....46876

**24 CFR**

Ch. V ....47284

**Proposed Rules:**

968 ....47740

**25 CFR**

**Proposed Rules:**

502 ....46227

**26 CFR**

1 ....46876, 46877

**29 CFR**

**Proposed Rules:**

2560 ....47262

**30 CFR**

914 ....47138

**Proposed Rules:**

100 ....47330
773 ....47617
870 ....47617
917 ....46933
934 ....46695

**31 CFR**

103 ....47141
344 ....46443
357 ....46860

**Proposed Rules:**

103 ....47156
212 ....46428

**32 CFR**

199 ....46877
311 ....46445

**33 CFR**

100 ....46553, 46669
117 ....46879, 46880
151 ....46446
165 ....46670, 46671

**Proposed Rules:**

117 ....46697
334 ....47166

**36 CFR**

**Proposed Rules:**

292 ....47167

**38 CFR**

1 ....47532
3 ....47532
9 ....47532

**39 CFR**

20 ....47558

**Proposed Rules:**

20 ....47394
111 ....47178

**40 CFR**

9 ....47114
32 ....47149
52 ....46199, 46202, 46208, 46446, 46880, 47369
55 ....46406
81 ....46208
86 ....47114
180 ....46882, 46885, 46888, 46894, 46900, 47560, 47561
185 ....47561
186 ....46900, 47561
300 ....46211

**Proposed Rules:**

9 ....46937
52 ....46228, 46229, 46451, 46938, 47399
60 ....46453
63 ....46804
70 ....46451
79 ....47400
81 ....46229, 46234, 46238
86 ....46937
170 ....47544
260 ....47401
261 ....47401, 47402
273 ....47401
300 ....46938, 47619

**41 CFR**

**Proposed Rules:**

101–1 ....47179
101–46 ....47179

**42 CFR**

416 ....47237

**Proposed Rules:**

416 ....46698
1000 ....47182
1001 ....47182, 47195
1002 ....47182
1005 ....47182

**43 CFR**

1810 ....47568

**46 CFR**

28 ....46672
298 ....47149

**47 CFR**

54 ....47369
64 ....46447, 47152, 47237, 47369
68 ....47371
69 ....47369
73 ....47371
90 ....46211

**Proposed Rules:**

1 ....46241
54 ....47404
64 ....47404
73 ....46707, 46708, 47406
76 ....46453
80 ....46243
90 ....46468

**48 CFR**

212 ....47153
225 ....47153
231 ....47154
244 ....47153
252 ....47153
704 ....47532
715 ....47532
726 ....47532
750 ....47532
752 ....47532
1602 ....47569
1603 ....47569
1604 ....47569
1615 ....47569
1616 ....47569
1629 ....47569
1631 ....47569
1643 ....47569
1644 ....47569
1645 ....47569
1649 ....47569
1652 ....47569
1653 ....47569

**Proposed Rules:**

212 ....47407
225 ....47407
252 ....47407
833 ....47411
852 ....47411

**49 CFR**

172 ....46214
174 ....46214
175 ....46214
176 ....46214
177 ....46214
571 ....46907
575 ....46447
1002 ....46217
1108 ....46217
1121 ....47583
1150 ....47583
1206 ....46919

**Proposed Rules:**

571 ....47414

**50 CFR**

20 ....46420
25 ....47372
32 ....47372
600 ....47584
622 ....46677, 46679
660 ....46920, 47587
679 ....46680, 46681

**Proposed Rules:**

17 ....46709, 46710
20 ....46801
630 ....47416
648 ....46470

## 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 SEPTEMBER 10, 1997

**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Precious corals; published 9-10-97

**ENVIRONMENTAL PROTECTION AGENCY**
Air quality implementation plans; approval and promulgation; various States:
Georgia; published 8-11-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Triadimefon; published 9-10-97

**FEDERAL COMMUNICATIONS COMMISSION**
Freedom of Information Act; implementation; published 8-11-97

**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**
**Agency for International Development**
Clauses and forms:
Personal services abroad; direct USAID contracts; published 8-11-97

**POSTAL SERVICE**
International Mail Manual:
Global package link service; implementation; published 9-10-97

**TRANSPORTATION DEPARTMENT**
**Maritime Administration**
Vessel financing assistance:
Obligation guarantees; owners and charterers citizenship requirements; published 9-8-97

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**
**Agricultural Marketing Service**
Pears (winter) grown in Oregon et al.; comments due by 9-19-97; published 8-20-97

**AGRICULTURE DEPARTMENT**
**Animal and Plant Health Inspection Service**
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle—
State and area classifications; comments due by 9-16-97; published 7-18-97

**AGRICULTURE DEPARTMENT**
**Commodity Credit Corporation**
Export programs:
Payment guarantees; expanding export transactions; comments due by 9-15-97; published 8-15-97

**AGRICULTURE DEPARTMENT**
**Food Safety and Inspection Service**
Meat and poultry inspection:
Natural or regenerated collagen sausage casings; labeling requirements; comments due by 9-15-97; published 7-17-97

**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Endangered and threatened species:
Coho salmon—
Southern Oregon/Northern California coast; comments due by 9-16-97; published 7-18-97
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Crab; comments due by 9-15-97; published 7-15-97
Magnuson Act provisions
National standard guidelines; comments due by 9-18-97; published 8-4-97
Northeastern United States fisheries—
Northeast multispecies; comments due by 9-15-97; published 8-27-97
West Coast States and Western Pacific fisheries—
Northern anchovy; comments due by 9-15-97; published 8-21-97
Ocean and coastal resource management:
Marine sanctuaries—
Thunder Bay National Marine Sanctuary, MI; designation; comments due by 9-18-97; published 6-23-97

**ENERGY DEPARTMENT**
Acquisition regulations:
Management and operating contracts—
Performance-based management contracting, fines, penalties, etc.; comments due by 9-19-97; published 8-20-97

**ENERGY DEPARTMENT**
**Federal Energy Regulatory Commission**
Property and oil pipeline units accounting regulations; comments due by 9-15-97; published 7-31-97

**ENVIRONMENTAL PROTECTION AGENCY**
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 9-15-97; published 8-15-97
Iowa; comments due by 9-15-97; published 8-15-97
Missouri; comments due by 9-15-97; published 8-15-97
Pennsylvania; comments due by 9-17-97; published 8-18-97
South Carolina; comments due by 9-19-97; published 8-20-97
Tennessee; comments due by 9-15-97; published 8-15-97
Wisconsin; comments due by 9-15-97; published 7-10-97
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Texas; comments due by 9-18-97; published 8-19-97
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Corn gluten; comments due by 9-16-97; published 7-18-97
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 9-15-97; published 8-15-97

**FARM CREDIT ADMINISTRATION**
Farm credit system:
Loan policies and operations—
Short- and intermediate-term credit; System and non-System lenders; comments due by 9-15-97; published 7-17-97

**FEDERAL COMMUNICATIONS COMMISSION**
Common carrier services:
Unauthorized changes of consumer's long distance carriers (slamming); policies and rules; comments due by 9-15-97; published 8-14-97
Frequency allocations and radio treaty matters:
Television channels 60—69; 746—806 MHz band; comments due by 9-15-97; published 7-31-97
Radio services, special:
Maritime services—
Licensing process simplification and flexibility for public coast stations; comments due by 9-15-97; published 9-2-97
Radio stations; table of assignments:
Kansas; comments due by 9-15-97; published 7-31-97
Pennsylvania et al.; comments due by 9-15-97; published 7-31-97

**FEDERAL DEPOSIT INSURANCE CORPORATION**
International banking regulations; consolidation and simplification; comments due by 9-15-97; published 7-15-97

**FEDERAL TRADE COMMISSION**
Trade regulation rules:
Leakproof, guaranteed leakproof, etc.; deceptive use as descriptive of dry cell batteries; comments due by 9-18-97; published 8-19-97

**HEALTH AND HUMAN SERVICES DEPARTMENT**
**Food and Drug Administration**
Medical devices:
Class III preamendment devices; lung water monitor, powered vaginal muscle stimulator for therapeutic use, and stair-climbing wheelchair; comments due by 9-16-97; published 6-18-97

**INTERIOR DEPARTMENT**
**Fish and Wildlife Service**
Endangered and threatened species:
Newcomb's snail; comments due by 9-19-97; published 7-21-97

**INTERIOR DEPARTMENT**
**Minerals Management Service**
Outer Continental Shelf; oil, gas, and sulphur operations:
Drilling and completion operations; blowout preventer testing requirements; comments due by 9-15-97; published 7-15-97

**INTERIOR DEPARTMENT**
**Surface Mining Reclamation and Enforcement Office**
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota; comments due by 9-19-97; published 9-4-97

**SOCIAL SECURITY ADMINISTRATION**
Freedom of Information Act; implementation; comments due by 9-15-97; published 8-14-97

**TRANSPORTATION DEPARTMENT**
**Coast Guard**
Anchorage regulations:
New York; comments due by 9-16-97; published 7-18-97

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Air carrier certification and operations:
Digital flight data recorder upgrade requirements; comments due by 9-15-97; published 7-17-97
Airworthiness directives:
Aerospatiale; comments due by 9-15-97; published 7-15-97
Airbus; comments due by 9-16-97; published 8-7-97
Boeing; comments due by 9-15-97; published 7-16-97
Bombardier; comments due by 9-15-97; published 7-17-97
British Aerospace; comments due by 9-15-97; published 7-16-97
Construcciones Aeronauticas; comments due by 9-16-97; published 8-7-97
Dassault; comments due by 9-15-97; published 8-5-97
McDonnell Douglas; comments due by 9-16-97; published 7-18-97
Airworthiness standards:
Special conditions—
Boeing model 747 series airplanes; comments due by 9-17-97; published 8-28-97

**TRANSPORTATION DEPARTMENT**
**Federal Railroad Administration**
Track safety standards:
Miscellaneous amendments; comments due by 9-15-97; published 7-3-97

**VETERANS AFFAIRS DEPARTMENT**
Loan guaranty:
Automatic processing authority, loan reporting, and retention requirements; comments due by 9-15-97; published 7-15-97

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

**Last List August 19, 1997**

## Public Laws Electronic Notification Service

Free electronic mail notification of newly enacted Public Laws is now available. To subscribe, send E-mail to **PENS@GPO.GOV** with the message:

*SUBSCRIBE PENS-L FIRSTNAME LASTNAME.*