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# federal register

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7046 of October 30, 1997**

## National Employer Support of the Guard and Reserve Week, 1997

**By the President of the United States of America**

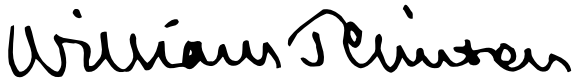
**A Proclamation**

As we approach this century's end, many of the blocs and barriers that divided the world for 50 years largely have fallen away. All around the world, with America's help, nations are moving from conflict to cooperation. However, we still face challenges that have taken on new and dangerous dimensions: ethnic and religious violence, aggression by outlaw states, the illegal drug trade, and threats from international terrorism and weapons of mass destruction. The National Guard and Reserve play a vital role in the response of America's Armed Forces to this broad spectrum of challenges to our national security, and they are an indispensable part of the effort to promote peace and democratic values.

While most Americans understand and deeply appreciate the strategic and military value of our National Guard and Reserve forces, too often we fail to recognize or acknowledge the important contributions of their civilian employers. When called upon to share their greatest resource—employees serving as citizen-soldiers—these employers subordinate their own interests for the good of our country, even when they may incur financial hardship and organizational disruption. It is only because of the willingness by employers to place our Nation's well-being above their own that our National Guard and Reserve are able to provide mission-ready and accessible forces to help preserve our freedom and protect our national interests. The generosity of these employers is key to enabling Reserve components to play an ever greater and more diverse role in our country's Armed Forces. By setting aside this special time to honor the sacrifice of our Nation's employers, we express our heartfelt appreciation to these patriots for employing our citizen-soldiers, making it possible for them to serve, and helping to keep America strong, secure, and free.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 2 through November 8, 1997, as National Employer Support of the Guard and Reserve Week. I encourage all Americans to join me in expressing our heartfelt thanks to the civilian employers of the members of our National Guard and Reserve for their extraordinary sacrifices on behalf of our Nation. I also call upon State and local officials, private organizations, businesses, and all military commanders to observe this week with appropriate ceremonies and activities.

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



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# Rules and Regulations

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

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM–25; Special Conditions No. 25–ANM–16A]**

## Special Conditions: Boeing Model 747 Series Airplanes; Overhead Crew Rest Area

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Amended special conditions.

**SUMMARY:** These amended special conditions are issued to the Boeing Commercial Airplane Company for the Model 747 series airplanes. This airplane has a novel or unusual design feature associated with the overhead crew rest area. Special Conditions No. 25–ANM–16 were issued on November 13, 1987, addressing this installation. On January 23, 1997, Boeing applied for a type design change which proposes to add an additional feature; the installation of curtains or partitions in the crew rest area. Since the applicable airworthiness regulations, including those contained in Special Conditions No. 25–ANM–16, do not contain adequate or appropriate safety standards for this particular design feature, these amended special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards for transport category airplanes.

**EFFECTIVE DATE:** October 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, FAA, Transport Standards Staff, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2799, or facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 17, 1986, the Boeing Commercial Airplane Company applied for a change to Type Certificate No. A20WE to include Model 747 series airplanes with overhead crew rest areas installed. The crew rest area was to be installed above the main passenger cabin in the vicinity of the Number 5 passenger door. This is an area that had not been used for this purpose in any previous transport category airplane. Due to the novel or unusual features associated with the installation of those crew rest areas, Special Conditions No. 25–ANM–16 were issued on November 13, 1987, to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate. Upon issuance, Special Conditions No. 25–ANM–16 became part of the regulations incorporated by reference in Type Certificate No. A20WE for Boeing 747 series airplanes.

Boeing Commercial Airplane Group now proposes certification of overhead crew rest areas that would be divided into three sections by a hard partition and a curtain. These crew rest areas, which would be in the same location, would be designated for in-flight use only and would include additional novel or unusual design features not incorporated in the previous crew rest areas. Because of these additional features, the regulations incorporated by reference in Type Certificate No. A20WE, including Special Conditions 25–ANM–16, do not contain adequate or appropriate safety standards. Special Conditions 25–ANM–16 would, therefore, be amended to contain the additional safety standards found necessary to establish a level of safety equivalent to that established in the regulations.

### Discussion

A hard partition separates the crew rest area into forward and aft sections while a door in the partition provides access between the forward and aft sections. A curtain slides in the forward and aft directions to visually divide the aft section of the crew rest area. Item 3 of Special Conditions No. 25–ANM–16 requires that a stairway be installed between the main deck and the crew rest area. Additionally, there must be an alternate evacuation route for occupants of the crew rest area, located on the opposite side of the crew rest area or sufficiently separated within the compartment from the stairway. The installation of a hard partition creates an area within the crew rest area which does not have a means of egressing directly to the main cabin.

In addition to the partition, a curtain has been added to the crew rest area which further breaks up the crew rest area into sections. This was not considered in Special Conditions No. 25–ANM–16. The curtain and partition installation also reduces the accessibility to the emergency equipment and communication controls, and has the potential to prevent the occupants from being able to easily locate the primary and secondary escape means. This could cause additional confusion during an emergency.

Since the installation of a door in the crew rest area raises concerns about operational reliability during an in-flight emergency and since the related paragraphs of § 25.819 from which the original special conditions were developed require two evacuation routes, design features must be provided to assure that occupants of the forward section will be able to vacate the crew rest area in the event of an in-flight emergency. Additional emergency equipment and two-way communication equipment will also be required in the forward section since the equipment in the aft area will not be readily accessible to the forward section occupants in the event of an in-flight emergency.

A limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of the evacuation routes would be required.

The additional safety standards are contained in Item 13 of these amended special conditions. Items 1 through 12 are standards already adopted in Special Conditions No. 25–ANM–16.

### Type Certification Basis

The Type Certification Basis for the Boeing Model 747 series prior to the 747–400 is Part 25 of the FAR effective February 1, 1965, as amended by Amendments 25–1 through 25–8, plus Amendments 25–15, 25–17, 25–18, 25–20, and 25–39, with certain exceptions and several sets of special conditions, which are identified in Type Certificate Data Sheet No. A20WE. These

exceptions are not pertinent to the subject of overhead crew rest areas.

The regulations incorporated by reference in Type Certificate No. A20WE for the Boeing Model 747–400 series airplanes include Part 25 of the FAR as amended by Amendments 25–1 through 25–59, with certain exceptions not relevant to the installation of an overhead crew rest area.

In addition, the regulations incorporated by reference for all 747 series include the noise certification requirements of Part 36 of the FAR, emission standards, and a number of special conditions, including Special Conditions No. 25–ANM–16.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

**Discussion of Comments**

Notice of Proposed Special Conditions No. SC–97–4–NM for the Boeing Model 747 series airplanes, was published in the **Federal Register** on August 28, 1997 (62 FR 45589). Fourteen comments (from 4 different commenters) were received.

Four comments were submitted by The Boeing Company. One seeks to limit the applicability of the new requirements in Item 13 to new designs and wants clarification that prior certified designs should be exempt from the revisions to the special condition. The FAA is not aware of any previously certified crew rest configurations that are divided into sections by a partition with a door. However, the FAA agrees that the requirements of Item 13 are only applicable to new designs. Existing designs approved by Type Certificate (TC) or by Supplemental Type Certificate (STC) are not required to be modified and can continue to be delivered without any retroactive changes. Any new TC or STC projects that modify an existing crew rest area or install a crew rest area into a previously certificated aircraft will be required to comply with the new requirements contained in Item 13, if the rest area is divided into sections. Since Item 13 contains requirements pertaining only to crew rest areas that are divided into sections, the requirements for crew rest areas not divided into sections are unchanged.

Another comment suggests that Item 13, paragraph a., should be revised to prevent confusion. Paragraph a. states, ''* * * there must be an audible alert concurrent with automatic presentation of supplemental oxygen masks in each section of the crew rest, * * *''. Currently it is unclear whether the alerting method and/or the supplemental oxygen masks are required in each section of the crew rest area. The intent of paragraph a. was to require automatically presented supplemental oxygen in each section of the crew rest area. The presentation of the supplemental oxygen masks must be accompanied by an alert that can be heard in each section of the crew rest area. Paragraph a. has been revised to allow one alerting device to serve more than one section, provided it can clearly be heard in each section. Paragraph a. has also been clarified to identify that the supplemental oxygen masks are required in each section of the crew rest area.

Another comment objects to the requirement in Item 13, paragraph e., that requires doors installed between partitions to be frangible from either direction. It was proposed to change the requirement to state that, ''All doors installed must be designed to preclude anyone from being trapped inside the compartment.'' This proposed revision identifies door performance criteria rather than a specific design solution. The proposed revision is also consistent with the requirement that was applied to the 777–200 Lower Lobe Attendant Rest. For this crew rest area, Boeing proposes alternate means to open the partition door in the event it is jammed or inoperable. The door can be removed from the aft side by disconnecting the hinge pins. From the front side the striker mechanism can be defeated to open the door and access the evacuation routes. The FAA concurs with the comment. These alternative means of opening a jammed or blocked door are acceptable, and that consideration should be given to designs that meet the proposed performance criteria rather than require partition doors to be frangible from both sides. Item 13, paragraph e., of these amended special conditions has been revised accordingly.

Another comment seeks to change the requirements contained in Item 13, paragraph f. This paragraph requires two-way voice communication equipment and additional emergency equipment in each section of a crew rest created by the installation of a hard partition with a door. The proposed revision suggests that the additional equipment should only be required in section(s) that did not provide an escape route to the main deck. The rationale was that the overall area of the crew rest is unchanged, so the only reason the additional equipment would be needed is if the partition door were inoperable (blocked or jammed). If the door were blocked or jammed, the alternate escape route could be used, precluding the necessity for the additional two-way communication equipment and emergency equipment. The FAA disagrees this is the only reason to install the additional equipment. There are several other scenarios that the FAA has considered. There may be a need for the main deck flightcrew to alert the occupants of the crew rest area to an in-flight emergency in the passenger cabin. In this case, a phone in each section needs to be readily accessible. Another situation that may occur is the need for additional emergency equipment to fight a fire just outside a partition door. Accepting this comment could result in circumstances where a flight attendant may be forced to evacuate a crew rest area rather than retrieve the emergency equipment and fight a fire. This would be unacceptable. In this type of an emergency the two-way voice communication equipment is also necessary so that backup personnel can be contacted.

Two comments were received from a company that modifies aircraft interiors by STC projects. One comment was similar to the previously addressed comment regarding the requirements for frangible doors. The commenter thinks the requirement for a two-way frangible door is too restrictive and that other means of preventing entrapment within a compartment should be allowed. The commenter suggests that Item 13, paragraph e., could be applied to a lavatory door installed in the crew rest area. For an application such as a lavatory door, it was suggested that a removable panel in the door could adequately provide a means by which entrapment could be prevented. As discussed previously, the FAA agrees that other means to prevent entrapment should be considered and has revised Item 13, paragraph e., accordingly.

This commenter also suggests that the requirement for additional emergency equipment contained in Item 13, paragraph f., should not be applied to a small section such as a lavatory, since a lavatory is not expected to be occupied for extended periods of time. The FAA agrees with this comment and has revised Item 13, paragraph f., accordingly. In addition, Item 13, paragraph f., has also been revised using

the above rationale to remove the requirement for additional two-way voice communication equipment in areas that are only meant to be temporarily occupied.

A representative from the Association of Flight Attendants (AFA) submitted several comments. A summary of the AFA's position is that a crew rest area that is divided into sections by partitions and doors does not provide the same level of safety as the ''open'' configuration that was initially certified.

One comment from the AFA was that the hard partition and curtain block the lines of sight within the crew rest area. The visual obstructions could then reduce the situational awareness within the individual sections, should an emergency develop. The example given by the commenter is that with the previously approved open area, if a fire were to break out, all occupants would be able to immediately assess conditions throughout the crew rest area. The commenter also expresses concern that the partition and curtains would limit visibility of the primary and secondary evacuation routes. Although the situational awareness from visibility between the sections may be reduced, the FAA's position is that the new requirements for additional smoke detectors, decompression alarms, two-way voice communication equipment, and public address (PA) systems audible in each section adequately compensate for the reduced visibility. These systems will adequately alert the crew rest area occupants to emergencies in the crew rest area and to emergencies on the main deck of the aircraft.

In order to compensate for reduced visibility of the escape routes, exit signs have been required in each section of the crew rest area to assist the occupants in locating the primary exit. It should also be noted that the occupants of this crew rest area are required by Item 12 of these special conditions to receive additional training in the use of both the primary and alternate evacuation routes. After considering the requirement for additional occupant training, the additional signs required by Item 13, paragraphs d. and e., and the small confines of the overhead crew rest area, it has been determined that the installation of the hard partition and curtain are very unlikely to create a situation where the occupants would not be able to locate either of the escape routes. To assure that future installations don't propose what could be envisioned as a maze within the overhead crew rest area, Item 13, paragraph e., prohibits arrangements that would require the occupants to pass through more than one door before reaching the primary exit.

Another comment opposes installation of the partition door because of concerns for entrapment and the potential of the door to become a barrier to evacuation. There is no specific time requirement for evacuating the overhead crew rest area since it is not allowed to be occupied for taxi, takeoff and landing. Boeing has conducted certification testing that has shown that the door in the hard partition can be opened or removed should the door become blocked or jammed. The hinge pins can be removed from the aft side, and the striker mechanism can be defeated from the forward side; these operations can be accomplished in several seconds and are contrary to comments suggesting these features are difficult to operate. Since the door can be opened or removed in several seconds, the door cannot be considered an entrapment hazard or an impediment to egress. It should be noted that similar hinge pin designs and striker defeat mechanisms have been previously approved for other crew rest areas and lavatories.

A comment was also made that the door hinge pins should be relocated to the forward side of the partition door in conjunction with relocating the striker defeat mechanism to the aft side. There was no supportive reasoning provided for this recommendation, although it appears that the commenter believes that in the event the door is blocked or inoperable, it would be easier to evacuate the forward section of the crew rest area by removing the door from it's hinges than by defeating the striker mechanism. As was previously stated, the door design proposed by Boeing has been reviewed by the FAA, and has been found to provide an acceptable means to prevent entrapment.

Another comment suggests that a crash axe should be required in the forward compartment as a backup to the striker defeat mechanism. This suggestion will not be added to these special conditions. The partition door proposed by Boeing has been designed so that it cannot be jammed as a result of aircraft structural failure. Even if the door were jammed, it is possible to defeat the striker mechanism to gain access to the aft section of the crew rest area. If for some reason it were not possible to operate the striker defeat mechanism, the occupants of the forward section of the crew rest area could still use the two-way voice communication equipment required by Item 13, paragraph f., to summon additional help. Since this area is not allowed to be occupied for taxi, takeoff, and landing, there is no immediate need to be able to evacuate to the main deck. For this reason, the two-way voice communication equipment is considered an adequate backup to the striker defeat mechanism.

A comment was also submitted regarding the requirement for one additional protective breathing equipment (PBE) in the forward section of the crew rest. Concern was expressed that one additional PBE installed in the forward section of the crew rest area would not adequately protect all the occupants. The PBE's that are installed in the forward and aft sections are intended to be used for firefighting, not for providing breathable air for each crew rest occupant. There are no other crew rest areas that require one PBE per occupant. In the event of a fire in the crew rest area, it would be expected that one or two flight attendants would don the protective breathing equipment and stay to fight the fire while the others quickly evacuated to the main deck. For this reason, the one additional PBE in the forward section provides the same level of safety for a divided crew rest as has been provided for the previously certified open crew rest in that its installation assures accessibility of the emergency equipment deemed most critical, within each section of the crew rest area.

Another comment suggests that the leg rests on the double seats located directly aft of the partition door should be required to be stowed when not in use. For the Boeing 747–400 that was reviewed by the AFA, instructional placards have been installed that require the legrests be stowed in accordance with the commenter's suggestion. It is the FAA's position that it is not necessary to include this proposal in the revised special conditions, as the legrests do not affect the partition door operation and can be quickly stowed by anyone in the aft section of the crew rest area. As a normal function of certifying new crew rest configurations, this type of a potential egress hindrance would be evaluated and appropriate actions would be taken to ensure the effectiveness of the escape path.

Another comment from the AFA relates a near-fire incident inside a 747–400 crew rest where a blanket started smoldering in a crew rest bunk after having been in contact with a reading light. The commenter requests that fire retardant lights and materials be required in this area. The types of materials allowed in the overhead crew rest area are already addressed as part of the certification basis of the 747–400 which includes § 25.853, Amendment 59. In addition to the materials required

by § 25.853 Amendment 59, the crew rest area is also protected by a smoke detection system required by Item 10; Item 13, paragraph c.; and Item 13, paragraph f., that annunciates in the flight deck, even when the crew rest area is unoccupied. In regard to the specific incident identified by the commenter, Boeing has made design changes to replace the style of reading light involved in the near fire incident with a reading light design that puts out less heat.

One comment was received from the Air Line Pilots Association, who states that the location of the crew rest area would make it unsuitable for cockpit crews, but provided no supportive reasoning for its position.

It is the FAA's position that the additional criteria contained in Item 13 of these special conditions provides an equal level of safety for a divided crew rest as that established by the regulations incorporated by reference in Type Certificate No. A20WE.

Under standard practice, the effective date of final or amended special conditions would be 30 days after the date of publication in the **Federal Register**. However, since delivery of Model 747–400 airplanes with these additional novel or unusual design features is currently scheduled for October 24, 1997, and because a delay would significantly affect the applicant's installation and type certification of the crew rest area, the FAA finds that good cause exists for making these amended special conditions effective upon issuance.

*Conclusion:* This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

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

**The Amended Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following amended special conditions are issued as part of the type certification basis for the Boeing Model 747 series airplanes.

1. Occupancy of the overhead crew rest area is limited to a maximum of 10 crewmembers. Occupancy during taxi, takeoff, or landing is not permitted.

2. There must be a stairway between the main deck and the crew rest area and there must be an alternate evacuation route for occupants of the crew rest area.

The stairway and alternate evacuation route must be located on opposite sides of the crew rest area or have sufficient separation within the compartment. The stairway and the alternate evacuation route must provide for evacuation of an incapacitated person, with assistance, from the crew rest area to the main deck, must not be dependent on any powered device, and must be designed to minimize the possibility of blockage which might result from fire, mechanical or structural failure. The crewmember procedures for carriage of an incapacitated person must be established.

3. An exit sign meeting the requirements of § 25.812(b)(1)(i) must be provided in the crew rest area near the stairway.

4. In the event the airplane's main power system should fail, emergency illumination of the crew rest area must be automatically provided. Unless two independent sources of normal lighting are provided, the emergency illumination of the crew rest area must be automatically provided if the crew rest area normal lighting system should fail. The illumination level must be sufficient for the occupants of the crew rest area to locate, and descend to the main deck by means of the stairway and/or the alternate evacuation route, and to read any required operating instructions.

5. There must be a means for two-way voice communication between crewmembers on the flight deck and occupants of the crew rest area, and between crewmembers and at least one flight attendant seat on the main deck and occupants of the crew rest area.

6. There must also be either public address speaker(s), or other means of alerting the occupants of the crew rest area to an emergency situation, installed in the crew rest area.

7. There must be a means, readily detectable by occupants of the crew rest area, that indicates when seat belts should be fastened and when smoking is prohibited.

8. For each occupant permitted in the crew rest area, there must be an approved seat or berth that must be able to withstand the maximum flight loads when occupied.

9. The following equipment must be provided:

a. At least one approved fire extinguisher appropriate to the kinds of fires likely to occur.

b. One protective breathing device, having TSO–C99 authorization or equivalent, suitable for firefighting.

c. One flashlight.

10. A smoke detection system that annunciates in the flight deck and is audible in the crew rest area must be provided.

11. A supplemental oxygen system equivalent to that provided for main deck passengers must be provided for each seat and berth.

12. There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of the evacuation routes.

13. The following requirements apply to crew rest areas that are divided into several sections by the installation of curtains or partitions.

a. To compensate for lack of crowd awareness, there must be an aural alert that can be heard in each section of the crew rest area that accompanies automatic presentation of supplemental oxygen masks in each section of the crew rest area. The supplemental oxygen masks are required in each section whether or not seats or berths are installed in each section. There must also be a means by which the flightcrew can manually deploy the oxygen masks.

b. A placard is required adjacent to each curtain that visually divides or separates the overhead crew rest area into small areas to serve a function of creating privacy. The placard must require that the curtain(s) remain open when the private area it creates is unoccupied. The vestibule area adjacent to the stairway is not considered a private area and, as such, its vacancy does not require a placard.

c. Each crew rest section created by the installation of a curtain must meet the requirements of items 4, 6, 7, and 10 of these special conditions with the curtain open or closed.

d. Overhead crew rest areas, which are visually divided to the extent that evacuation could be affected, must have exit signs meeting the requirements of § 25.812(b)(1)(i) in each separate area of the crew rest area which direct occupants to the primary stairway exit.

e. Sections within an overhead crew rest area that are created by the installation of a rigid partition with a door physically separating the sections must provide a secondary evacuation route from each section of the crew rest area to the main deck, or it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Any door between the sections must be shown to be openable when crowded against. There can be no

more than one door between each section of a crew rest area and the primary stairway exit. Exit signs meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit must be provided in each section of the crew rest area.

f. Each smaller area, within the main crew rest area, created by the installation of a partition with a door must individually meet the requirements of items 4, 5, 6, 7, 9 and 10 of these special conditions with the door open or closed. The requirements of items 5 and 9 are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

Issued in Renton, Washington, on October 23, 1997.

**Darrell M. Pederson,**

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

[FR Doc. 97–29125 Filed 11–3–97; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–268–AD; Amendment 39–10190; AD 97–23–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727–100 Series Airplanes Modified in Accordance With Supplemental Type Certificate (STC) SA8472SW

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 727–100 series airplanes. This action requires a revision to the Airplane Flight Manual (AFM) to prohibit stabilized operation between 60 and 75 percent N1 speed during ground operations in reverse or forward thrust. This amendment is prompted by a report that, during preparation for takeoff, a transport category airplane equipped with Rolls-Royce Tay 650–15 engines sustained an engine fan blade failure, followed by an engine fire. The actions specified in this AD are intended to prevent uncontained failure of engine fan blades due to high cycle fatigue cracking, which could result in loss of thrust from the affected engine and secondary damage to the airplane and/or fire.

**DATES:** Effective November 19, 1997.

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

Comments for inclusion in the Rules Docket must be received on or before January 5, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The Airplane Flight Manual (AFM) Supplement referenced in this AD may be obtained from the Dee Howard Company, P.O. Box 469001, San Antonio, Texas 78246. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ron Filler, Flight Test Pilot, Airplane Certification Office, ASW–150, FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas, 76137–4298; telephone (817) 222–5132; fax (817) 222–5960.

**SUPPLEMENTARY INFORMATION:** The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that it received a report indicating that, during preparation for takeoff, a Fokker Model F28 Mark 0100 series airplane equipped with Rolls-Royce Tay 650–15 engines sustained an engine fan blade failure, followed by an engine fire.

Investigation revealed that five fan blades failed at the root area, three fan blades failed at mid-height, and the remainder were damaged severely. Further investigation revealed that all five fan blades failed due to rapid high cycle fatigue cracking with low cycle fatigue cracking origin. Evidence of rapid high cycle fatigue cracking indicates that an operational effect is causing high vibratory stresses. Rolls-Royce considers that the high cycle fatigue cracking was caused by vibration during previous thrust reverser applications.

Upon further investigation, the FAA has determined that Boeing 727QF airplanes have engine installation and service records that are similar to Fokker Model F28 Mark 0100 series airplanes. Boeing 727QF airplanes are Boeing Model 727–100 airplanes that have been modified in accordance with Supplemental Type Certificate (STC) SA8472SW, which includes the installation of Rolls-Royce Tay 651–54 engines.

The FAA has evaluated these findings and has determined that high-cycle fatigue cracking of the engine fan blades could cause uncontained failure of the engine fan blades. Such fatigue cracking, if not corrected, could result in loss of thrust from the affected engine and secondary damage to the airplane and/or fire.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Dee Howard Airplane Flight Manual (AFM) Supplement CR102–F–066, Change 19, dated October 2, 1997 (for Boeing 727QF airplanes), which prohibits stabilized operation between 60 and 75 percent N1 speed during ground operations in reverse or forward thrust. Accomplishment of the actions specified in the service document is intended to adequately address the identified unsafe condition.

### Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 727–100 series airplanes of this same type design registered in the United States, this AD is issued to require a revision to the Limitations Section of the FAA-approved AFM to prohibit stabilized operation between 60 and 75 percent N1 speed during ground operations in reverse or forward thrust.

These actions are required to be accomplished in accordance with the document described previously.

### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–268–AD.'' The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**97–23–02 Boeing:** Amendment 39–10190. Docket 97–NM–268–AD.

*Applicability:* Model 727–100 series airplanes modified in accordance with Supplemental Type Certificate (STC) SA8472SW, which includes installation of Rolls-Royce Tay 651–54 engines; certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent uncontained failure of engine fan blades due to high cycle fatigue cracking, which could result in loss of thrust from the affected engine and secondary damage to the airplane and/or fire, accomplish the following:

(a) Within 72 hours after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Dee Howard Airplane AFM Supplement CR102–F–066, Change 19, dated October 2, 1997, in the AFM.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Airplane Certification Office, ASW–150, FAA, Rotorcraft Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Airplane Certification Office, ASW–150.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Airplane Certification Office, ASW–150.

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

(d) The AFM revision shall be done in accordance with Dee Howard Airplane Flight Manual Supplement CR102–F–066, Change 19, dated October 2, 1997 (for Boeing 727QF airplanes), which contains the following list of effective pages.

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| Title Page ..... | 19 ..... | November 25, 1992. |
| 1–1, 1–3, 3–4, 3–15, 4–61. | Not Shown ... | October 2, 1997. |

The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Dee Howard Company, P.O. Box 469001, San Antonio, Texas 78246. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 19, 1997.

Issued in Renton, Washington, on October 29, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–29114 Filed 11–3–97; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–225–AD; Amendment 39–10191; AD 97–23–03]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace (Jetstream) Model HS 748 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model HS 748 series airplanes. This action requires a one-time visual inspection of the retraction jack mounting brackets in the nose landing gear bay to determine the type of attachment bolts installed on the bracket bearing caps, and replacement of any incorrect bolt with a serviceable bolt of the correct type. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent failure of the bearing cap attachment bolts, which could result in detachment of the bearing caps and consequent collapse of the nose landing gear on landing.

**DATES:** Effective November 19, 1997.

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

Comments for inclusion in the Rules Docket must be received on or before December 4, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–225–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Ai(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace (Jetstream) Model HS 748 series airplanes. The CAA advises that it received reports indicating that mounting bracket assemblies of several replacement retraction jack mounting brackets in the nose landing gear bay were installed with incorrect ''transport'' bolts, rather than the required high-strength bolts. The actions specified in this AD are intended to prevent failure of the bearing cap attachment bolts, which could result in detachment of the bearing caps and consequent collapse of the nose landing gear on landing.

### Explanation of Relevant Service Information

Jetstream has issued Service Bulletin HS748–53–59-INSP, dated May 4, 1994, which describes procedures for a one-time visual inspection of the retraction jack mounting brackets in the nose landing gear bay to determine the type of attachment bolts installed on the bracket bearing caps, and replacement of any incorrect bolt with a serviceable bolt of the correct type. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 007–05–94 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

### FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the service bulletin described previously, except as described below.

### Differences Between this AD and the Service Information

Operators should note that, unlike the procedures described in the referenced service bulletin and the British airworthiness directive, this AD will not permit further flight with any incorrect bolt installed on a bracket bearing cap. The FAA has determined that, due to the safety implications and consequences associated with the installation of such incorrect parts, all incorrect bolts must be replaced prior to further flight.

### Cost Impact

None of the Jetstream Model HS 748 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

### Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

### Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–225–AD.'' The postcard will be date stamped and returned to the commenter.

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**97–23–03 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft] Limited]:** Amendment 39–10191. Docket 97–NM–225–AD.

*Applicability:* Jetstream Model HS 748 series airplanes on which Modification 7513 has been accomplished; certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the bearing cap attachment bolts, which could result in detachment of the bearing caps and consequent collapse of the nose landing gear on landing, accomplish the following:

(a) Within 100 landings after the effective date of this AD, perform a one-time visual inspection of the retraction jack mounting brackets in the nose landing gear bay to determine the type of attachment bolts installed on the bracket bearing caps, in accordance with Jetstream Service Bulletin HS748–53–59–INSP, dated May 4, 1994. If any series A111 bolt or any other hexagonal head bolt is found, prior to further flight, replace that bolt with a new 12-point, star-shaped bolt having part number A228E18H or MS21250H04018, and washer having part number 8D14776; in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be accomplished in accordance with Jetstream Service Bulletin HS748–53–59–INSP, dated May 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., 13850 McLearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 19, 1997.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 007–05–94.

Issued in Renton, Washington, on October 29, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–29113 Filed 11–3–97; 8:45 am]

**BILLING CODE 4910–13–U**

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

## 29 CFR Part 2204

## Amendment of the Commission's Equal Access to Justice Rules

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Occupational Safety and Health Review Commission's procedural rules on eligibility under the equal Access to Justice Act by adding a paragraph requiring that the net worth and number of employees of an applicant shall be aggregated with those of its affiliates, unless to do so would be unfair and contrary to the purposes of the Equal Access to Justice Act. This amendment will minimize extra unnecessary collateral litigation and bring the Commission into conformity with the corresponding rule adopted by most other federal agencies. This document also changes the shortened reference to the Equal Access to Justice Act used in this Part to read, as it is commonly referred to, ''EAJA.''

**DATES:** Effective November 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Earl R. Ohman, Jr., General Counsel, (202) 606–5410, Occupational Safety and Health Review Commission, 1120 20th Street, N.W., Ninth Floor, Washington, DC 20036–3419.

**SUPPLEMENTARY INFORMATION:** On August 11, 1997, the Commission published in

the **Federal Register** a proposed new paragraph (f) to add to 29 CFR 2204.105 containing its Rules of Procedure concerning eligibility under the Equal Access to Justice Act, 62 FR 42957 (August 11, 1997). The new paragraph is based on the model rule of the (former) Administrative Conference of the United States, adopted in large part by most federal agencies, concerning aggregation of the net worth and number of employees of the applicant with those of its affiliates. At the same time, the Commission also proposed to change all references to the ''EAJ Act'' in 29 CFR Part 2204 to read ''EAJA'' to conform to the common shortened reference term for the Equal Access to Justice Act. The only comments that the Commission received were from the Office of the Solicitor, U.S. Department of Labor, which supports the changes as proposed. The Commission thanks that office for its time and interest.

**List of Subjects in 29 CFR Part 2204**

Claims, Equal access to justice, Lawyers.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Part 2204 of the Code of Federal Regulations to read as follows:

## PART 2204—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN PROCEEDINGS BEFORE THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

1. The authority citation for Part 2204 continues to read as follows:

**Authority:** Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

## PART 2204—[AMENDED]

2. All references in Part 2204 to ''EAJ Act'' are revised to read ''EAJA'' wherever they appear.

3. A new paragraph (f) is added to § 2204.105 to read as follows:

**§ 2204.105 Eligibility of applicants.**

* * * * *

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, financial relationships of the applicant other than those described in this paragraph may constitute special circumstances that would make an award unjust.

Dated: October 29, 1997.

**Stuart E. Weisberg,**

*Chairman.*

**Daniel Guttman,**

*Commissioner.*

[FR Doc. 97–29101 Filed 11–3–97; 8:45 am]

BILLING CODE 7600–01–M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 914

**[SPATS No. IN–134–FOR; State Program Amendment No. 95–12]**

## Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving with certain exceptions a proposed amendment to the Indiana regulatory program (hereinafter referred to as the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to the Indiana Surface Coal Mining and Reclamation Act (ISMCRA) as enacted by the Indiana General Assembly (1995) in Senator Enrolled Act 125 (SEA 125). The proposed amendment, concerning the submittal of affected area status reports and performance bonding, is intended to revise the Indiana program to be consistent with SMCRA and incorporate State initiatives.

**EFFECTIVE DATE:** November 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204–1521, Telephone (317) 226–6166.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

### I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

### II. Submission of the Proposed Amendment

By letter dated September 11, 1995 (Administrative Record No. IND–1510), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment as its own initiative. SEA 125 amends ISMCRA by adding new sections and revising existing sections, concerning affected area status reports and performance bonding, to recodified Indiana Code (IC) 14–8. The provisions of the ISMCRA that Indiana proposes to add at recodified IC 14–8 are: IC 14–8–42.5, definition of ''collateral''; IC 14–8–2–49.5, definition of ''comparative balance sheet''; IC 14–8–2–49.6, definition of ''comparative income statement''; IC 14–8–2–274.5, definition of ''Surface Mining Control and Reclamation Act.'' The provisions of the ISMCRA that Indiana proposes to revise or add at recodified IC 14–34 are: IC 14–34–5–10, affected area status reports; IC 14–34–6–14.3 and IC 14–34–14.6, general requirements of performance bonding; IC 14–34–7–0.5, definition of ''collateral''; IC 14–34–7–0.6, definition of ''comparative balance sheet''; IC 14–34–7–0.7, definition of ''comparative income statement''; IC 14–34–7–2.5, definition of ''Surface Mining Control and Reclamation Act''; IC 14–34–7–1, definition of ''liabilities''; IC–14–34–7–4(b), definition of ''current liabilities''; IC 14–34–7–4(d), conditions for self-bonding; IC 14–34–7–4(e), (f) and (g), additional conditions for self-bonding; IC 14–34–7–4.1, replacement of self-bonds; IC 14–34–7–5, corporate guarantee; IC 14–34–7–7, indemnity agreement conditions; IC 14–34–7–7.1, use of collateral to support a self-bond; IC 14–34–7–8, information requirements for self-bonding; IC 14–34–7–9, requirements for a change in financial conditions; IC 14–34–7–10, self-bonding report requirements; IC 14–34–7–11, self-bond coverage requirements: IC 14–34–7–12, self-bond Phase I grading

release requirements; and IC 14–34–7–13, nonseverability provision.

OSM announced receipt of the proposed amendment in January 22, 1996, **Federal Register** (61 FR 1551), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on February 21, 1996.

During its review of the amendment, OSM identified concerns relating to duplicate bond coverage/reclamations agreements, IC 14–34–6–14.6; definition of ''liabilities,'' IC 14–34–7–1; self-bonding qualifying criteria, IC 14–34–7–4; collateral self-bonds, IC 14–34–7–7.1; and report of qualified independent public accounting consultant, IC 14–34–7–10. OSM notified Indiana of these concerns by letter dated September 13, 1996 (Administrative Record No. INC–1543).

By letter dated October 25, 1996 (Administrative Record No. IND–1545), Indiana responded to most of OSM's concerns by submitting additional explanatory information. By letter dated August 4, 1997 (Administrative Record No. IND–1584), Indiana responded to OSM's editorial concerns by submitting Senate Enrolled Act 7, which contained technical corrections to its proposed amendment. Because the additional information merely clarified certain provisions of Indiana's proposed amendment, OSM did not reopen the public comment period.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

### *A. Revisions to Indian's Statutes That Are Substantively Identical to the Corresponding Federal Provisions*

1. Indiana proposes to revise the following statute that contains language that is identical in meaning to the counterpart Federal regulation indicated in brackets IC 14–34–7–5, Self-Bonding Corporate Guarantee [30 CFR 800.23(c)(1)].

Because the above proposed revision is identical in meaning to the corresponding Federal regulation, the Director finds that Indiana's proposed statute is no less stringent than SMCRA and no less effective than the Federal rule.

### *B. Revisions to Indiana's Statutes That Are Not Substantively Identical to the Corresponding Federal Provisions*

1. IC 14–8–2–42.5 and IC 14–34–7–0.5 Definition of Collateral

Indiana proposes to add a definition of ''Collateral'' to its statutes. At IC 14–8–2–42.5, Indiana proposes to add language as follows.

''Collateral,'' for purposes of IC 14–34–7, has the meaning set forth in IC–14–34–7–0.5.

At IC 14–34–7–0.5, Indiana proposes to add the following definition of ''Collateral.''

As used in this chapter, *collateral* means the actual or constructive deposit, as appropriate, with the director of one (1) or more of the following types of property in support of a self-bond:

(1) A perfected, first-lien security interest in favor of the department of natural resources in real property located in Indiana that meets the requirements of this chapter.

(2) Securities backed by the full faith and credit of the United States government, or state government securities, that are: (A) acceptable to; (B) endorsed to the order of; and (C) placed in the possession of; the director.

(3) Personal property that is located in Indiana and owned by the applicant, the market value of which is more than one million dollars ($1,000,000) per property unit.

Indiana's proposed language at IC 14–34–7–0.5(1) and (2) would allow operators to use as collateral the same forms of collateral approved by the Federal regulation that define ''Collateral bond'' at 30 CFR 800.5(b)(5) and (6). The Federal regulation at 30 CFR 800.5(b) do not include a provision that allows personal property to be used as collateral, but neither do they specifically prohibit the use of personal property for collateral.

With the exception of personal property, Indiana is proposing collateral mechanisms to support a self-bond that are similar to the collateral mechanisms allowed in the federal program to support a permittee's indemnity agreement as bond. The Federal self-bonding regulations at 30 CFR 800.23 do not contain a counterpart to Indiana's revised statutes providing for the use of personal property as collateral for self-bonds. The Federal regulations at 30 CFR 800.21 do allow the use of real property and government-backed securities as collateral for indemnity agreements. OSM eliminated the use of personal property as collateral in a July 19, 1983, **Federal Register** notice (48 FR 32932). In that notice OSM stated that ''because of potential problems, including potential loss of the property, difficulties obtaining appraisals of such items, fluctuations in value, and the potential attachment of liens, personal property as a general form of collateral was deleted from the Federal definition of acceptable collateral.'' Indiana's proposal to allow self-bonding applicants to collateralize a self-bond with personal property is similar to the State of Wyoming's self-bonding program approved by OSM (55 FR 30227, July 25, 1990). As stated in the preamble to the approval of the Wyoming regulations, OSM said that the State had addressed all of OSM's concerns about the use of personal property, namely that with a minimum value of $1 million per unit, the concern that property would be small and hard to track is resolved. The Indiana proposal also requires a per unit property value of $1 million. In addition, the State plans to accept the value of property at the difference between the marke t value of the State's projected liquidation costs. This is consistent with the requirements under the Federal regulations to adjust the value of collateral by a margin that represents liquidation cost in order to avoid inflating the value of the property as bonding collateral. Both the Wyoming self-bonding program and the proposed Indiana self-bonding revisions require the applicant to meet certain financial tests in order to use collateral to support the self-bond. In Wyoming, the tests are an alternate set of tests. Indiana is proposing that an applicant meet two out of the three standard financial tests in order to pledge personal property collateral; therefore, this provides extra assurance that the applicant will have the financial resources necessary to perform the reclamation should the property decrease in value. Like the Wyoming program, Indiana's proposal requires that the applicant provide the State with a perfected, first lien security interest. Therefore, the concern over liens is resolved. The State's proposal to require maintenance reports will help assure that the collateral is maintained in good working order. As with the Wyoming program, the Director finds that the State's proposed use of personal property to collaterlize self-bond is not inconsistent with not less effective that the Federal regulations. Therefore, the Direct's is approving Indiana's proposed definitions for the term collateral at IC 14–8–2–42.5 and IC 14–34–7–0.5.

2. IC 14–8–2–274.5 and IC 14–34–7–2.5 Definition of Surface Mining Control and Reclamation Act

Indiana proposes to add a definition of ''Surface Mining Control and Reclamation Act,'' to its statutes. At IC 14–8–2–274.5, Indiana proposes to add language as follows.

''Surface Mining Control and Reclamation Act,'' for purpose of IC 14–34–7, has the meaning set forth in IC 14–34–7–2.5.

At IC 14–34–7–2.5, Indiana proposes to add the following definition of ''Surface Mining Control and Reclamation Act.''

As used in this chapter, *Surface Mining Control and Reclamation Act* means the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328).

The Federal regulations at 30 CFR 705.5 define the term ''Act'' to mean the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87. Indiana's proposed definition at IC 14–34–7–2.5, which refers to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 through 1328) as the ''Surface Mining Control and Reclamation Act,'' would not render the Indiana statutes less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 705.5. Therefore, the Director is approving Indiana's definition of at IC 14–8–2–274.5 and IC 14–34–7.2.5.

3. IC 14–34–7–1 Definition of Liabilities

Indiana's existing statute at IC 14–34–7–1 is identical to the Federal definition of libitlities at 30 CFR 800.23(a). The State proposes to amend the definition of liabilities as:

''obligations to transfer assets or provide services to other entities in the future as a result of past transaction. The term does not include amounts that are required to be recorded for financial accounting purpose under Statement of Financial Accounting Standards number 106 issued by the Financial Accounting Standards Board and effective December 1990.''

The State proposes to allow companies to exclude FAS 106 obligations form liabilities for the purpose of applying for self-bonding.

As outlined in OSM's September 13, 1996, letter to Indiana, this proposal is deemed to be less effective than the counterpart Federal regulations. The Federal regulations require that all liabilities be shown on an applicant's balance sheet prepared in accordance with Generally Accepted Accounting Principles (GAAP). GAAP follows the accounting rules established by the Financial Accounting Standards Board (FASB), a private organization funded by professional accounting associations.

In its October 25, 1996, response to OSM's letter, the State supports its position that FAS 106 liabilities do not need to be included in an applicant's financial statement by referring to public comments dated February 6, 1996 (Administrative Record Number IND–1532), as its justification.

OSM does not believe that these comments reflect the most current and/or the most accurate information on FAS 106 and its effects on self-bonding applicants. Therefore, OSM continues to consider the State's proposed definition of liabilities to be less effective than the Federal regulations for the reasons discussed below.

The information and journal articles that the comments referred to have subsequently been updated by more current thinking and journal articles on the subject. In addition, the State has not provided any evidence that eliminating FAS 106 liabilities from an applicant's balance sheet provides the same level of information and accuracy for financial reporting that is gained by reporting all liabilities (as required by the FASB). Part of the FAS 106 liability includes, the current portion of the liability (for retirees for the current year). Eliminating the total FAS 106 obligation from the balance sheet would result in an inaccurate accounting of the applicant's current obligations. This would result in a current ratio that does not represent the actual current obligations of the applicant.

Below is an analysis of the FAS 106 obligations and reasons why removing the obligations from an applicant's balance sheet is less effective than the Federal regulations. A new accounting rule, FAS 106, issued by the FASB in December 1990, requires companies to accrue the costs of postretirement health benefits and to show this as a liability on their balance sheets starting in 1993. Prior to 1993, these obligations were recognized on a pay-as-you-go-basis. FAS 106 obligations include health benefits earned during an employee's active employment and paid out at retirement. Computing the amount of the liability involves a number of factors including long-term interest rates and the health care cost trend rate. As stated in ''FAS 106 Still Looms Large,'' published in the January 23, 1995, issue of Pensions and Investments, ''While many investment managers and financial analysts believe 1993's big writeoffs and resulting earnings losses put the bad news behind, there will be ongoing, albeit smaller, financial problems associated with FAS 106, that could produce a drag on earnings, according to benefits specialists and actuaries.''

The State's proposed change to the definition of liabilities would allow self-bonding applicants to compute the self-bond qualifying ratios and financial limitations based on pre-FAS 106 financial data, thereby applying the 25 percent of net worth test to pre-FAS 106 net worth. Under this proposal, the State would not know the extent and the effects of the applicant's FAS 106 obligation on the applicant's long-term financial condition. This could result in the State accepting a self-bond from an applicant whose long-term FAS 106 obligations are material enough to threaten the future viability of the self-bonding arrangement. While the obligation as a whole does not represent a cash outlay in any given accounting period, it eventually must be paid whether a company amortizes the amount (delayed recognition) or accounts for it on an ''immediate recognition basis.'' While some components of the FAS 106 obligation are estimated, to recognize only that part of the obligation being paid to current retirees, or to exclude the liability altogether, results in an inaccurate picture of a companys' long term financial condition. The longer the life of the mine for which a self-bonding arrangement is sought, the greater the significance of the FAS 106 obligation because of the long-term nature of reclamation.

Articles published in the February and March 1993, issues of Corporate Cashflow Magazine and Financial World state that bond rating services such as Moody's and Standard and Poor's will consider the effects of FAS 106 when rating a company's bond issues. Companies' bonds will be rated on the basis of both pre-FAS 106 and post-FAS 106 financials. One of the articles advises readers to ''Ignore FAS 106 at your peril * * *'' and that '' 'Over time there will be credit-quality implications for those companies that are unable to recoup FAS 106 losses through earnings or some other balance-sheet enhancement, such as issuing new stock,' says Joseph C. Bencivenga, managing director and head of corporate bond research for Salomon Brothers. Adds Brown Brothers' Hill: 'Future claims on cash should not be overlooked by equity investors in their investment decision-making. This is especially true for the more labor-intensive, unionized industries with large postretirement benefit liabilities, where retired employees sometimes have a claim on cash equal to that of the shareholders.' '' In the January 23, 1995, issue of Pensions and Investments, the

article entitled ''FAS 106 Still Looms Large,'' states that ''In 1993, most companies adopted FAS 106 and recognized obligations for past service liabilities on the balance sheet, resulting in writedowns of 7% to 12% in book value among Standard & Poor's 500 companies alone.''

The above articles on FAS 106 are in contrast to earlier articles on the subject published in 1989 and 1991 that indicated that bond rating services, Moody's and Standard and Poor's (S&P), would ignore the effects of FAS 106 and that bond ratings would stay the same. However, as indicated in the above 1993 and 1995 articles, after companies began implementing the requirement in 1993, the post-retiree health benefit obligations far exceeded amounts anticipated causing rating companies such as S&P and Moody's to take a second look at the effects of these obligations. According to ''FAS 106 Still Looms Large,'' in the January 23, 1995, issue of Pensions and Investments, ''liabilities that resulted in billions of dollars in reduced operations earnings last year still hold some expensive surprises. Industry sources warn there may be additional reductions in earnings linked to higher ongoing annual expenses caused by Financial Accounting Standards FAS 106.''

In its summary to the FAS 106 statement, the FASB stated that one of the Board's objectives in issuing this Statement is'' * * * to enhance the ability of users of the employer's financial statement to understand the extent and effects of the employer's undertaking to provide postretirement benefits to its employees by disclosing relevant information about the obligation and cost of the postretirement benefit plan and how those amounts are measured.''

A commenter (Administrative Record Number IND–1532), in support of the State's proposed amendment, stated that the Indiana statute (SEA 125) was ''enacted to remedy a situation resulting from a change in accounting standards [FAS 106] which occurred subsequent to the original enactment of statutory provisions governing self-bonding in Indiana in 1988, as a result of which most Indiana coal producers are no longer eligible to self-bond.'' The commenter believes that the Federal self-bonding regulations should also be revised in light of the FAS 106 change to accounting principles especially because ''credit-rating agencies, including the bond rating agencies referred to in section 800.23(b)(3)(i) [S&P and Moody's], have decided not to change credit ratings based on FAS 106.'' To support the State's proposal, the commenter cited an article published in 1989, prior to the 1993 implementation of FAS 106 and prior to the financial industry knowing the actual effects of implementing FAS 106.

OSM disagrees with the commenter that bond rating companies have decided not to change credit [bond] ratings and that the best approach is to follow the lead of credit-rating agencies as justification for changing the self-bonding regulations. Based on OSM's discussions with Standard and Poor's (S&P) and Dun and Bradstreet (D&B), and in reviewing current literature as discussed above, OSM believes that the effects of FAS 106 apply to many aspects of an applicant's financial statement and are too complex to be discounted by simply removing the obligation from liabilities. S&P and Moody's employ many variables related to FAS 106 obligations when establishing a company's bond rating. FAS 106 obligations are considered.

During its review of the State's proposal, OSM conducted research to determine how the credit industry is treating FAS 106 obligations in underwriting decisions. Financial analysts from (S&P) and (D&B) discussed their procedures for recognizing the FAS 106 obligation with OSM. One senior analyst from S&P said that S&P recognizes the FAS 106 transaction as a ''non-cash'' charge and retains the prior bond rating if the fundamentals of a company have not changed. According to S&P's written guidance, ''Corporate Finance Criteria,'' S&P states that FAS 106 obligations:

> ''are not viewed in the same light as straight debt, since amounts to be paid in future years are subject to change. Nonetheless, S&P believes that, for analytic purposes, the entire unfunded APBO [Accumulated Postretirement Benefit Obligation] should be reflected in the balance sheet as a liability regardless of whether a company opts for immediate or delayed recognition [of the liability] under FAS 106 * * *. Moreover, it is critical to have one basis for analysis to allow comparison between companies. In assessing capital structure, S&P makes balance sheet adjustments so that the unfunded APBO is fully recognized * * *. In cases where a company's retiree medical liability burden is material, S&P does not rely on any single figure as a definitive representation of the OPEB [Employers' Accounting for Post-retirement Benefits other than pensions]. Rather, the analysis may consider several alternative estimates and financial ratios based on each * * *. The level of cash outlays has the most immediate impact on a company's financial health. Given the trend of dramatic increases in spending for these benefits, S&P focuses on prospective cash outlays * * *. In assessing the significance of OPEBs and other debt-like obligations to a company, the ratio of total liabilities to net worth becomes a more significant ratio.''

As shown above, S&P considers the effects of FAS 106 when assigning bond ratings; and in fact, S&P adjusts the obligation so that it is fully recognized (rather than amortized) in order to have a basis of comparison between companies. If an applicant can retain an A or higher bond rating after implementing FAS 106, and after being analyzed by S&P or Moody's, it may still qualify for self-bonding.

In discussions with OSM, two Dun and Bradstreet financial analysts indicated that they might drop a company's Dun and Bradstreet credit rating as a result of FAS 106; however, this would be based on many considerations including whether a company made a profit and had positive cash flow after implementing FAS 106. One analyst said that if the financial effects of a one-time charge were significant, but other items in the financial statement indicated the company was strong, he might change the credit rating to a ''blank'' rating [no rating assigned] with notes of explanation. Both analysts indicated that following a company's implementation of FAS 106, factors that are heavily weighed during the credit rating process are a company's cash flow, profitability, and ranking when compared with industry peers (industry norms).

Bond ratings and credit ratings may or may not be changed depending on the overall financial condition of the company being rated. Therefore, eliminating the FS 106 obligation from liabilities based on assumptions that the liability is being ignored by the rating services and the investment and credit industries is incorrect.

Based on the above discussion, the Director is not approving the proposed revision to Indiana's definition of liabilities at IC 14–34–7–1, and is requiring Indiana to remove the disapproved language. To be no less effective than the Federal regulations, the State needs to retain its current approved definition of liabilities that requires all liabilities be reported in the application, and not exclude FAS 106 obligations from the definition of liabilities. A possible future option for dealing with FAS 106-type obligations would be to develop alternative self-bonding criteria, no less effective than the Federal regulations, that recognize FAS 106 obligations as a liability while still allowing financially strong companies to qualify for self-bonding.

4. IC 14–34–6–14.3 Release of Bond From Undisturbed Areas

Indiana proposes to add the following new section at 14–34–6–14.3.

The director may release the bond, deposit, or letter of credit covering an area that has not been disturbed by surface mining activities. A release under this subsection is not subject to the public notice and hearing requirements set forth in sections 7 through 14 of this chapter.

Indiana's proposed language is similar to the Federal provision at 30 CFR 800.15(c) where a permittee may request reduction of the bond amount upon submission of evidence to the regulatory authority that the method of operation or other circumstances reduces the estimated cost for the regulatory authority to reclaim the bonded area. Under this provision, bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond releases subject to the performance bond release requirements at 30 CFR 800.40. Therefore, Indiana's proposed new section at 1C 14–34–6–14.3 would not render Indiana's statutes less stringent than SMCRA or less effective than the Federal regulations.

The Director notes that Indiana's reference to the term ''subsection'' in the proposed statute should be ''section'' and is requesting Indiana to correct this error.

5. IC 14–34–7–4(b) Definition of Current Liabilities

Indiana proposes to revise IC 14–34–7–4(b) by making nonsubstantive language changes, designating the existing provision as (b)(1), and adding (b)(2). Subsection (b)(2 specifies that ''current liabilities'' also include dividends payable on preferred stock within one (1) quarter, if declared, or one (1) year, if a pattern of declaring dividends each quarter is apparent from past business practice. Existing IC 14–34–7–4(b) is substantially the same as the Federal definition of ''current liabilities'' at 30 CFR 800.23(a). Indiana's proposed additional language at (b)(2) would add specificity to the definition of ''current liabilities'' and would not render the State statutes less stringent than SMCRA or less effective than the Federal regulations at 30 CFR 800.23(a).

6. IC 14–34–7–8 Information Requirements for Self-Bonding

Indiana proposes to add a provision at IC 14–34–7–8(2) that requires submission of unaudited financial statements for completed quarters in the current fiscal year not later than sixty (60) days after the end of each quarter. The Federal regulations at 30 CFR 800.23(b)(4) also require submission of such statements but do not set a specific time for submittal. Indiana's proposed requirement clarifies when the statements are to be submitted, and it will not render the State statutes less stringent than SMCRA or less effective than the Federal regulations.

*C. Revisions to Indiana's Statutes With No Corresponding Federal Provisions*

1. IC 14–8–2–49.5 and IC 14–34–7–0.6 Definition of Comparative Balance Sheet

Indiana proposes to add a definition of ''Comparative balance sheet'' to its statutes. At IC 14–8–2–49.5, Indiana proposes to add language as follows.

''Comparative balance sheet'', for purposes of IC 14–34–7, has the meaning set forth in IC 14–34–7–0.6.

At IC 14–34–7–0.6, Indiana proposes to add the following definition of ''Comparative balance sheet.''

As used in this chapter, *comparative balance sheet* means items accounts from a number of the operator's successive yearly balance sheets arranged side by side in a single statement.

Although SMCRA and the Federal regulations do not include a definition for ''comparative balance sheet,'' the term, as defined by Indiana, is a generally accepted accounting term. Therefore, the Director is approving Indiana's proposed definitions at IC 14–8–2–49.5 and IC 14–34–7–0.6. The Director notes that an apparent typographical error exists in the proposed definition at IC 14–8–2–49.5, where ''item accounts'' should read ''item amounts,'' and is requesting Indiana to correct this error.

2. IC 14–8–2–49.6 and IC 14–34–7–0.7 Definition of Comparative Income Statement

Indiana proposes to add a definition of ''Comparative income statement'' to its statutes. At IC 14–8–2–49.6, Indiana proposes to add language as follows.

''Comparative income statement'', for purposes of IC 14–34–7, has the meaning set forth in IC 14–34–7–0.7.

At IC 14–34–7–0.7, Indiana proposes to add the following definition of ''Comparative income statement.''

As used in this chapter *comparative income statement* means an operator's income statement amounts for a number of successive yearly periods arranged side by side in a single statement.

Although SMCRA and the Federal regulations do not include a definition for ''comparative income statement,'' the term, as defined by Indiana, is a generally accepted accounting term.

Therefore, the Director is approving Indiana's proposed definitions at IC 14–8–2–49.6 and IC 14–34–7–0.7.

3. IC 14–34–5–10 Affected Area Status Reports

Indiana proposes to amend IC 14–34–5–10, pertaining to affected area status reports, by removing time specific submittal requirements, adding language authorizing the State to adopt content and data filing requirements under its regulations, and making nonsubstantive wording changes.

There are no counterpart provisions in the Federal regulations that require submission of affected area status reports; however, the States' proposed changes at IC 14–34–5–10 are not inconsistent with SMCRA or less effective than the Federal regulations.

4. IC 14–34–6–14.6 Duplicate Bond Coverage/Reclamation Agreements

At IC 14–34–6–14.6, Indiana proposed to add a new section to its statutes. Subsection (a) specifies that the proposed section applies when an applicant or permittee submits a bond, deposit, or letter of credit covering an area that has been disturbed by surface coal mining activities and is covered by another bond, deposit, or letter of credit previously submitted by another permittee.

Indiana's proposed provision at subsection (b) allows release of the previously submitted bond, deposit, or letter of credit when the director of IDNR accepts the bond, deposit, or letter of credit submitted by the new applicant or permittee for the previously disturbed area. The new bond, deposit, or letter of credit is subject to the bonding standards of IC 14–34–6, sections 7 through 14. In its September 13, 1996, letter to Indiana, OSM expressed concern that as proposed at IC 14–34–6–14(6), the first bond could be released prior to issuance of the second permit, and if for some reason a permit is never issued to the second operator, the state could be left with an unreclaimed and unbonded site, since the previously submitted bond would have already been released. In its October 25, 1996, response to OSM's letter, Indiana explained that for the purposes of bond, the term ''accept'' at proposed IC 14–34–6–14.6(b)(1) coincides with permit approval. The new bond would not be approved until the replacement permit was approved an no previous bond would be considered for release until that time. Also, both companies would have to agree as to the acreage size and location and an acceptance of liability statement would have to be received from the new

permittee. Indiana supported its explanation by referring to its rule at 310 IAC 12–4–15 which states that the director of IDNR shall not release existing performance bonds until the permittee has submitted and the director of IDNR has approved acceptable replacement performance bonds. Indiana's proposed provision at subsection (b) is not inconsistent with the Federal regulations at 30 CFR Part 800 that require permit areas to be adequately bonded or the bonding requirements at 30 CFR 774.17 for transfer, assignment, or sale of permit rights. The Director is approving subsection (b) with the understanding that Indiana will place conditions on the permit of the second permittee that require assumption of the reclamation obligation of the previous permittee, that specifically give notice to the second permittee of the State's intention to release the previous permittee's bond in reliance on the assumption of liability by the second permittee, and that require any surety bond or other contract securing the reclamation obligation of the second permittee to reflect the assumption of liability and the intent to release the previous bond.

Indiana's proposed provision at subsection (c) allows two or more persons who are applicants or permittees, when each has filed a bond, deposit, or letter of credit covering the same area, to enter into an agreement, subject to approval by the director of IDNR, that allocates responsibility among the persons for the reclamation of the area. There are no counterpart provision in the Federal regulations that address overlapping permit areas that are double-bonded, but this proposed provision is not inconsistent with the Federal regulations at 30 CFR Part 800 that require permit areas, or increments of permit areas, to be adequately bonded.

Based on the above discussion, the Director is approving IC 14–34–6–14.6.

5. IC 14–34–7–4(d)–(g) Conditions for Self-Bonding

On its own initiative, the State proposed to revise IC 14–34–7–4 by making subsection (d) subject to new subsection (f), which pertains to requirements for an applicant to meet industry norms for the financial ratio tests, and by specifying at subsection (d) that the qualifying criteria in Section 4 must be met by the applicant at the time the self-bond is accepted [approved by the State as the bond].

The State also proposes to expand the existing standard qualifying criteria at subsection (d). The State is adding criteria at (d)(3), (4), (5), and (6) that require an applicant not to be subject to any outstanding cessation order issued under the State program or the Surface Mining Control and Reclamation Act, not owe any civil penalties or fees, not be delinquent in paying penalties or fees, and not be listed on the Applicant Violator system (AVS).

The State is adding a provision at (d)(7)(A), previously codified as (d)(3)(A), that requires an applicant to identify the bond rating service [Moody's or Standard and Poor's] that rated its bond issues. The State is adding a provision to (d)(7)(B), and (C), previously codified a (d)(3)(B) and (C), that requires an applicant to document its ratio values for the ratio of current assets to current liabilities and the ratio of total liabilities net worth for the four (4) years preceding the application, in addition to the existing requirement to demonstrate that the applicant met the required values for the year [fiscal year] immediately preceding the application. The State is adding subsection (e) that requires the applicant to add the proposed self-bond amount, excluding any amount currently accrued for reclamation that appears on the balance sheet, to either current liabilities or total liabilities before calculating the required financial ratio tests included in subsection (d)(7)(B) or (d)(7)(C).

The provisions added at subsections (d)(3), (4), (5), (6), and (7) that address an applicant's compliance status are no less effective than the Federal regulations. These proposals are consistent with OSM's preamble to the final self-bonding regulations (48 FR 36418, August 10, 1983) where in response to comments OSM stated that it ''agrees that the regulatory authority should consider the operator's past history of compliance and patterns of violation in deciding whether to allow an operator to self-bond. OSM does not intend to establish regulations which would detail how a history of compliance should be judged, however, and leaves this to the regulatory authority who has the final responsibility to accept or reject an application to self-bond.'' The proposed addition to subsection (d)(7)(A) requiring the applicant to identify which rating company rated the applicant's bonds would provide the State with more detailed information about the bond applicant's bond rating.

The State proposes to add new requirements at subsection (d)(8)(C) and (D), previously subsection (d)(4), that require an application to include comparative income statements and comparative balance sheets for a five-year period preceding the application, a list of liens filed against any assets of the applicant in any jurisdiction in the United States for an amount that is more than 2 percent of the applicant's net worth, a list of every action pending against the applicant, a list of every unsatisfied judgment rendered against the applicant within the seven years preceding the application, and a list of any petitions or bankruptcy actions against the applicant. under Indiana's proposed action at subsection (g), the State is requiring details about the listed liens, actions, and petitions such as jurisdiction, case number, parties, and status.

The proposed additional information that must be submitted with an application by the applicant or the applicant's corporate guarantor at subsection (d)(8)(C) and (D) is not inconsistent with the Federal regulation at 30 CFR 800.23(b)(4)(iii) that allows a regulatory authority to require additional unaudited information.

The State is adding subsection (f) that requires an applicant's financial ratios to be at least as favorable as those reported by Dun and Bradstreet's report of ''Industry Norms and Key Business Ratios.''

The proposed addition at subsection (f) requires that an applicant's key business ratios [as reported by Dun & Bradstreet] must be ''at least as favorable as those listed for the medium performers in the Dun and Bradstreet listing of Industry Norms and Key Business Ratios.'' This requirements is in addition to the requirements at subsections (d)(7)(B) and (C) for applicants to meet the standard financial tests of at least 1.2:1 for the ratio of current assets to current liabilities and not more than 2.5:1 for the ratio of total liabilities to net worth. Comparing an applicant to its industry norms would provide the State with information about how the applicant currently compares with its industry and can be useful in seeing financial trends.

In its October 25, 1996, response to OSM's letter dated September 13, 1996, the State explains and reaffirms that the qualifying criteria of the existing rules at subsections (d)(7)(B)(ii) and (iii) take precedence over the proposed qualifying criteria at subsection (f). OSM's letter recognized that the criteria proposed at subsection (f) are in addition to the criteria at subsection (d) but suggested that the State clarify that the criteria at subsection (d) would be the true qualifying criteria in any case. Given the financial criteria at subsection (d) must be met at a minimum, the State's proposal is no less effective than the Federal regulations.

OSM recommends that the State clarify which industry norms the applicant is required to meet at subsection (f). The Dun and Bradstreet industry norms report includes 15 different ratios. In addition, specifying time periods during which the norms must be met is important because the norms are dynamic and are updated periodically in the Dun and Bradstreet database. A cautious approach to comparing an applicant with industry norms is recommended since the norms could indicate an overall weak industry.

Based upon the above discussions, the Director finds that the proposed revisions to Indiana's self-bonding criteria at IC 14–34–7–4(d) through (g) are not inconsistent with the Federal requirements for self-bonding at 30 CFR 800.23(b), and the Director is approving them.

6. IC 14–34–7–4.1 Self-Bonding Reapplication and Replacement

The State proposes to add requirements at IC 14–34–7–4.1 for self-bonded permittees to either replace existing self-bonds in effect on January 1, 1995, with another allowable form of bond or reapply for self-bonding under the revised, proposed self-bonding provisions. If an application is not accepted under the proposed provisions, then the self-bond must be replaced with another allowable form of bond.

There is no direct Federal counterpart to the State proposal revisions; however, that part of the State's proposal that pertains to requirements for existing self-bonded permittees who no longer meet the criteria is not inconsistent with 30 CFR 800.23(g) which requires a self-bond to be replaced within 90 days of the permittee becoming aware that it no longer meets the criteria for self-bonding. Therefore, the Director is approving this new section.

7. IC 14–34–7–7 Self-Bonding Indemnity Agreement

The State proposes to add a provision at section 7(1) that requires all parties to the indemnity agreement to be liable to the director of IDNR for the costs of pursuing forfeiture of any self-bond posted by the permittee and liable for the costs of reclamation that are in excess of the forfeited self-bond amount. At section 7(6), the State is adding a requirement that all bonds and guarantees must be indemnified corporately and personally by all principals.

The existing State statute is substantively the same as the Federal counterpart regulations that require all parties bound to the agreement to execute an indemnity agreement for the sum of the self-bond. The State statute and Federal regulations require that the indemnity agreement be executed by two authorized corporate officers of all the parties bound and that the applicant or corporate guarantor must complete the approved reclamation plan or pay to the director of IDNR the amount necessary to complete the approved reclamation plan.

The State's proposed additional requirements for the self-bonding indemnity agreement do not have direct Federal counterpart requirements. However, the State's proposed requirements are not inconsistent with or less effective than the Federal regulations at 30 CFR 800.23(e) and 30 CFR 800.50(d)(1), and the Director is approving the proposed revisions at IC 14–34–7–7. Requiring that all self-bonds and guarantees be indemnified corporately and personally by all principals affords the State additional protection against nonpayment in the event of bond forfeiture.

8. IC 14–34–7–7.1 Collaterized Self-Bonds

As also discussed in finding No. B.1, Indiana proposes to revise its program to allow the use of collateral for securing self-bonds. The existing State statute requires that self-bonding applicants qualify on the basis of financial criteria at IC 14–34–7–4 without additional collateral. The Federal regulations at 30 CFR 800.23 do not contain a counterpart to Indiana's revised regulations; however, a similar proposal was approved for the Wyoming program on July 25, 1990 (55 CFR 30221).

The State proposes to allow a self-bonding applicant who cannot qualify on the basis of meeting the financial criteria or limitations at IC 14–34–7–4 to offer collateral in the form of real property, government-backed securities, and/or personal property. The real property must be located in Indiana, and a perfected, first-lien security interest made in favor of and deposited with the IDNR. Securities must be backed by the United States or the state government, and they must be endorsed to the order of and placed in the possession of the director of IDNR. The personal property must be located within the State, owned by the operator, and valued at more than $1 million per property unit. In addition to the offer of collateral, the applicant must execute an indemnity agreement that complies with IC 14–34–7–7.

For any property collateral offered to support a self-bond, the property must be valued at the difference between the fair market value of the property and reasonable expenses the IDNR anticipates incurring in selling the property. The fair market value must be determined by an appraiser proposed by the applicant. A description of the property and a statement of any liens, encumbrances, or adverse judgments imposed on the property and any pending litigation relating to the property is also required.

Real property may not include lands that are in the process of being mined or reclaimed or lands that are the subject of a mining application. Although, the operator may offer land that has been released from bond. Securities offered as collateral may include only securities that meet the definition of collateral at IC 14–34–7–0.5. Personal property must be in the possession of the operator; must be encumbered; and not include property already being used as collateral, goods that the operator sells in the ordinary course of business, fixtures, or certificates of deposit that are not federally insured. Evidence of ownership of property offered as collateral must be submitted in specified forms.

In order to offer personal property collateral, Indiana requires the applicant to satisfy the financial requirements in IC 14–34–7–4(d)(7) (B) and (C), which are two of the standard financial tests in the Indiana program. This proposal is similar to the approved Wyoming self-bonding program except that in the Wyoming program personal property collateral is only accepted when the applicant cannot meet the standard tests but can meet an alternative set of financial tests.

If personal property is accepted as collateral, quarterly and annual maintenance reports from the applicant are required. The director of IDNR may also require quarterly or annual inspections of the personal property. The director of IDNR shall require possession of the personal property or a mortgage or security agreement executed by the applicant with the right and power to sell or otherwise dispose of the property so as to ensure reclamation. While in possession of the IDNR, any income received from the collateral shall be remitted to the applicant. An applicant may substitute other property for any property accepted and held as collateral under specified conditions. If collateral is posted to support a self-bond, the applicant shall notify all persons that have an interest in the collateral and provide copies of the notices to director of IDNR.

In its October 13, 1996, letter to Indiana, OSM expressed concern

regarding three provisions in the State's collateral proposal that appeared to be less effective than the Federal regulations at 30 CFR 800.21 for collateral bonding.

(1) To be no less effective than the Federal regulations, the State needs to require that the market value of the individual or combined collateral (adjusted by a margin of value for the State's cost of liquidation) equals or exceeds the required bond amount under the self-bond indemnity agreement. In its October 25, 1996, response, the State explained that it intended to implement its proposed statute at section 7.1(b)(1) so that the cost of liquidating the property used as collateral will be deducted from the market value when determining the bonding value of the collateral. Given that the State will implement the proposed section to require that the collateral value, less liquidation costs, equal the required bond amount, this portion of the proposal is consistent with the Federal requirements at 30 CFR 800.21 and therefore no less effective than the Federal regulations.

(2) To be no less effective than the Federal regulations for real property collateral at 30 CFR 800.21(c)(2), the State must require that real property be appraised by an independent certified appraiser. In its response to OSM's concerns, the State indicated that while not stated, it intends to only accept appraisers who are ''professionally qualified.'' According to the Indiana Real Estate Appraisal Licensurer and Certification Board, Indiana statutes at IC 25–34.1–8–10 requires that appraisers in Indiana be licensed and certified. On September 22, 1997 (Administrative Record No. IND–1591), OSM discussed this issue with Indiana. Indiana stated that coal operators are required to comply with all Indiana rules and statutes, and they will be required to comply with IC 25–34.1–8–10. Therefore, Indiana's proposal is consistent with SMCRA and no less effective than the Federal regulations at 30 CFR 800.21(c)(2).

(3) The State's proposed statute at subsection (b)(2) requires that real property liens and encumbrances be disclosed in the application. This implies that the State has discretion to accept encumbered real property. In its letter, OSM stated that to be no less effective than the Federal regulations on real property collateral, the State must require that any real property accepted as collateral be unencumbered. In its response to this concern, the State explained that it does not intend to accept property that is encumbered and that it included the disclosure requirement as an aid to learning of liens and other encumbrances that might not otherwise be apparent (so as to prohibit acceptance of encumbered property). While the language is not clear in this regard, the State indicated that it will implement this proposal so that only unencumbered property is acceptable as collateral. Therefore, the proposal is consistent with SMCRA and no less effective than the Federal regulations at 30 CFR 800.21(c).

The Director finds that Indiana's proposed provisions at IC 14–34–7–7.1 are not inconsistent with the Federal regulations at 30 CFR 800.23 concerning self-bonding and are no less effective than the Federal regulations at 30 CFR 800.21 concerning collateral bonds. Therefore, the Director is approving Indiana's proposed provisions at IC 14–34–7–7.1.

9. IC 14–34–7–10 Self-Bonding Report Requirements

At IC 14–34–7–10, Indiana proposes to add a new section to its statutes to require that self-bonding applicants provide the director of IDNR with an independent public accounting consultant's report if requested. This is in addition to the financial statements and a report prepared by an independent certified public accountant that is required under IC 14–34–7–4(d)(8) and IC 14–34–7–8. The report shall be provided within 90 days after the applicant is notified that the report is required. The consultant must verify that the financial information required under IC 14–34–7–4 was prepared in accordance with generally accepted accounting principles and that the accounting principles were applied consistently for each year of the period for which the information is submitted. The consultant must also state the amount and reason for any restatement of the financial information that is necessary to meet the consistency requirement. Finally, the consultant must state whether any information reviewed would lead him to conclude that the applicant would not meet the requirements of IC 14–34–7–4 at the end of each of the three fiscal years ending after the month the report is completed. This report may also be required after the applicant's self-bond is accepted, but not more than once every three years unless the consultant cannot project the applicant's ability to meet the self-bonding financial criteria for each of the three fiscal years. If the consultant is unable to conclude that the applicant would meet the requirements of IC 14–34–7–4 for each of the three fiscal years, the applicant must submit an updated report annually. If the applicant fails to submit a report, the director of IDNR shall refuse to accept the self-bond until the applicant files the report. If a permittee who has posted a self-bond fails to submit a report when required by the director of IDNR, the permittee may be required to post an alternate form of bond.

In its letter of October 30, 1996 (Administrative Record No. IND–1545), Indiana indicated that the purpose of the option of financial projections is intended to give the director of IDNR a greater understanding for any future problems that may be anticipated that could influence the applicant's financial stability and is viewed as another tool for assessing risk.

There are no Federal counterpart provisions for a qualified independent public accounting consultant report that projects an applicant's future ability to meet self-bonding requirements. However, the State's proposed provisions are not inconsistent with the Federal regulations at 30 CFR 800.23(b)(4)(i) that require that an applicant's financial statements be audited by an independent certified public accountant with no adverse opinion or 30 CFR 800.23(f) that allow regulatory authorities to require updated financial information and independent certified public accountants' reports annually. Therefore, considering that the provisions in IC 14–34–7–10 are in addition to the State's counterparts to 30 CFR 800.23(b)(4)(i) and (f), the Director is approving them.

10. IC 14–34–7–11 Self-Bond Coverage Requirements

Indiana proposes to add provisions requiring permit increments that are self-bonded to be 100 percent self-bonded. For example, bond coverage of a permit increment could not consist of a combination of a surety bond and a self-bond. This is not inconsistent with SMCRA or the Federal regulations at 30 CFR Part 800 which allow permit increment bonding and require the regulatory authority to prescribe by regulation terms and conditions for performance bonds, including self-bonds.

The State also proposes to allow self-bond coverage on areas where as of July 1, 1995, grading has been deferred, or the approved deferral extended. However, areas where grading was deferred after July 1, 1995, may not be bonded by self-bonds or the Indiana bond pool. The State proposes to remove the self-bonding and bond pool option from companies that have been given approval to defer grading of an area in order to assure more long-term

certainty by requiring other forms of bond such as corporate surety bonds for grading-deferred areas. There are no Federal counterpart regulations for bond coverage of grading deferral areas. The State's bonding provisions at this section are not inconsistent with SMCRA or the Federal regulations at 30 CFR 800.23 on self-bonding in that self-bonding is a discretionary bonding program intended for financially strong companies that are in compliance with the statute, permit, and regulations. Therefore, the Director approves Indiana's proposed statute at IC 14–34–7–11.

11. IC 14–34–7–12 Self-Bond Phase I Grading Release Requirements

Indiana proposes additions to the self-bonding statutes that restrict the use of self-bonding when an area requires Phase I reclamation or is eligible for a Phase I grading release but the permittee has not applied for the release before the ''second November 1 after the year in which the coal was removed from the site covered by the self-bond.'' If this occurs, or if a release application is filed within the required time frame but not approved, then the permittee must replace the self-bond with another form of bond within 90 days. Permittees must also submit annual reports of acres under self-bond that have been affected and reclaimed.

Indiana proposes to exempt acreage and structures used to facilitate active mining and reclamation operations from the requirements of this section.

The State's proposal restricts the use of self-bonding for areas that have been used for fly or bottom ash disposal, flue gas byproducts, or coal processing wastes to 10 years after disturbance or after the acceptance of the self-bond, whichever is later. An alternative form of bond must be posted for the area within 90 days of its becoming ineligible for self-bonding.

If Indiana determines that an area is no longer eligible for self-bonding and an alternative form of bond is posted, the area is never again eligible for self-bonding and may not be bonded by Indiana's surface coal mine reclamation bond pool.

There are no direct counterpart provisions in SMCRA or the Federal regulations. The Director finds that the State's proposal is not inconsistent with SMCRA or the Federal regulations at 30 CFR 800.23 that allow regulatory authorities to accept self-bonds, and she is approving IC 14–34–7–12.

12. IC 14–34–7–13

Indiana proposes to add the following new section at IC 14–34–7–13.

For purposes of IC 1–1–1–8, if the amendments to IC 14–34–7–1, as amended by SEA 125–1995, are held invalid or otherwise unenforceable, the other amendments to IC 14–34–7 made by SEA 125–1995 are also void.

There are no counterparts to this proposal in SMCRA or the Federal regulations. However, as discussed in the findings above, the proposed amendments to IC 14–34–7 have no direct Federal counterparts. Therefore, the proposal to declare them void under the circumstances specified would not render the Indiana program less stringent than SMCRA or less effective than the Federal regulations. However, in accordance with 30 CFR 732.17(b)(3), Indiana must notify OSM of any actions it takes because of IC 14–34–7–13 that would effect or change any of the proposals at IC 14–34–7 that are being approved in this document.

## IV. Summary and Disposition of Comments

*Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Comments were received from the Indiana Coal Council and the National Coal Association. These comments have been addressed in finding No. III.B.3. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

*Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Indiana program. No Federal agencies responded.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (12 U.S.C. 7401 *et seq.*).

None of the revisions that Indiana proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IND–1515). It did not respond to OSM's request.

*Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. IND–1515). Neither SHPO nor ACHP responded to OSM's request.

## V. Director's Decision

Based on the above findings, the Director is approving with certain exceptions, the proposed amendment as submitted by Indiana on September 11, 1995.

The Director is not approving, as discussed in finding No. B.3, the new language Indiana is proposing to add to its definition of ''liabilities'' at IC 14–34–7–1 that would allow companies to exclude FAS 106 obligations from liabilities for the purpose of applying for self-bonding. Furthermore, the Director is requiring Indiana to remove this language and to notify OSM when the removal is completed.

The Director is approving, as discussed in finding No. C.4, IC 14–34–6–14.6(b) with the understanding that Indiana will place conditions on the permit of the second permittee that require assumption of the reclamation obligation of the previous permittee, that specifically give notice to the second permittee of the State's intention to release the previous permittee's bond in reliance on the assumption of liability by the second permittee, and that require any surety bond or other contract securing the reclamation obligation of the second permittee to reflect the assumption of liability and the intent to release the previous bond.

The Director notes, as discussed in finding No. B.4, that Indiana's reference to the term ''subsection'' in its statute at IC 14–34–6–14.3 should be ''section'' and, as discussed in finding No. C.1, Indiana's reference to ''item accounts'' in its definition at IC 14–34–7–0.6 should be ''item amounts.''

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

*Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

**VI. Procedural Determinations**

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 20, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 914—INDIANA**

1. The authority citation for Part 914 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

**§ 914.15 Approval of Indiana regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * * * * * * * | | |
| September 11, 1995 ..... | November 4, 1997 ..... | IC 14–8–2–42.5, –49.5, –49.6, –274.5; 14–34–5–10; 14–34–6–14.3, –14.6; 14–34–7–0.5, –0.6, –0.7, –2.5, –4 (b), (d) through (g), –4.1, –5, –7, –7.1, –8, –9, –10, –11, –12, –13. |

[FR Doc. 97–29132 Filed 11–3–97; 8:45 am]

BILLING CODE 4310–05–M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 311**

**OSD Privacy Program**

**AGENCY:** Office of the Secretary, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Secretary of Defense is exempting a system of records identified as DUSP 11, entitled POW/Missing Personnel Office Files. The exemption is needed to protect information properly classified under E.O. 12958, Classified National Security Information.

**EFFECTIVE DATE:** October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Bosworth at (703) 695–0970.

**SUPPLEMENTARY INFORMATION:**

The proposed rule was published on August 1, 1997, at 62 FR 41323. No comments were received, therefore, the rule is being adopted as published.

*Executive Order 12866.* It has been determined that this Privacy Act rule for the Department of Defense does not constitute ''significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

*Regulatory Flexibility Act.* It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

*Paperwork Reduction Act.* It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act, and 44 U.S.C. Chapter 35.

**List of Subjects in 32 CFR Part 311**

Privacy.

Accordingly, 32 CFR part 311 is amended as follows:

## PART 311—[AMENDED]

1. The authority citation for 32 CFR part 311 continues to read as follows:

**Authority:** Pub.L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 311.7, is amended by adding paragraphs (c)(11)(i) through (c)(11)(iii) to read as follows:

**§ 311.7 Procedures for exemptions.**

* * * * *

(c) * * *

(11) *System identifier and name*: DUSP 11, POW/Missing Personnel Office Files.

(i) *Exemption:* Information classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(1).

(iii) *Reasons:* From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 12958, as implemented by DoD 5200.1–R, may cause damage to the national security.

* * * * *

Dated: October 29, 1997.

**L.M. Bynum,**

*Alternate OSD* **Federal Register** *Liaison Officer, Department of Defense.*

[FR Doc. 97–29070 Filed 11–3–97; 8:45 am]

BILLING CODE 5000–04–F

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AI45**

### Survivors and Dependents Education: Extension of Eligibility Period

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** In a document published in the **Federal Register** on October 3, 1997 (62 FR 51783), VA amended the ''Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35'' regulations. The final rule, among other things, transferred the subject matter of paragraph (e) of § 21.3046 to a new § 21.3047. Inadvertently, two cross-references to said paragraph (e) were not amended to reflect the change. Accordingly, this document corrects this error by changing the cross-references to refer to the new § 21.3047.

**EFFECTIVE DATE:** November 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

**SUPPLEMENTARY INFORMATION:** The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.117.

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: October 28, 1997.

**Thomas O. Gessel,**

*Director, Office of Regulations Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 21, subpart C, is amended as set forth below.

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart C—Survivors'—and Dependents'—Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for subpart C continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

**§ 21.3046 [Amended]**

2. In § 21.3046, paragraph (c)(1) is amended by removing ''paragraphs (d) and (e) of this section'' and adding, in its place, ''paragraph (d) of this section and § 21.3047'' and paragraph (d)(6)(ii) is amended by removing ''or (e) of this section'' and adding, in its place, ''of this section or § 21.3047''.

[FR Doc. 97–29096 Filed 11–3–97; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

**[OPPTS–50621B; FRL–5745–1]**

**RIN 2070–AB27**

### Dipropylene Glycol Dimethyl Ether; Final Significant New Use Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as dipropylene glycol dimethyl ether (DGDE), which was the subject of premanufacture notice (PMN) P–93–507. This final rule will require persons who intend to manufacture, import, or process this substance for a use designated by this SNUR as a ''significant new use'' to notify EPA at least 90 days before commencing those manufacturing or processing activities. The notice will provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it can occur.

**DATES:** The effective date of this rule is January 5, 1998. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on November 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability:** Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

The proposed SNUR for dipropylene glycol dimethyl ether was published in the **Federal Register** on August 22, 1994 (59 FR 43079). While background information is presented here, readers should also consult the preamble of that proposed rule for further information on the objectives and rationale for this final rule.

## I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA promulgates a final significant new use rule, section 5(a)(1)(B) of TSCA and 40 CFR part 721 require persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for the significant new uses. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances. Persons subject to this SNUR must comply with most of the same requirements as submitters of premanufacture notices under section 5(a)(1) of TSCA. These requirements include the information submission requirements of sections 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

## II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. Regulatory provisions covering user fees applicable to significant new use notices are codified at 40 CFR part 700 under the authority of TSCA section 26(b). Interested persons may refer to those sections for further information.

## III. Discussion of Comments and Final Rule

Almost all public comments on the proposed SNUR for dipropylene glycol dimethyl ether (DGDE) were submitted to EPA by the PMN submitter. The other comments, which were general in nature and spoke to the advantages of the PMN substance over similar products, are discussed in Comment 5 and in the EPA Response.

The comments addressed each requirement of the proposed SNUR and also furnished substantial background material in the form of toxicological studies and technical information on the PMN substance and analogous chemical substances. Nearly all this information had previously been submitted to the Agency, considered during the PMN review period, and incorporated into the Agency's regulatory decision. The results of this toxicological review and analysis are reflected in the Agency's risk assessment document, which is part of the public record for this SNUR. It is important to note that although the risk assessment document does not specifically reference studies submitted following the PMN review period, most notably a reproductive toxicity study on the PMN substance, these studies were considered in EPA's final assessment of DGDE and support the Agency's decision. The comments also suggested language for revising the proposed SNUR, specifically to have the SNUR apply only to the substance when it was manufactured, imported, or processed containing greater than 5 percent by weight of the isomer propane 2,2′-oxybis[1-methoxy-. The Agency has particularly strong concerns for adverse health effects of that isomer and has adopted the above suggested approach in this final rule.

The proposed rule for DGDE listed the following uses as significant new uses that would require notice to the Agency 90 days prior to commencement:

(1) Manufacturing or processing the substance without use of dermal protection that provides an impervious barrier to the substance.

(2) Annual manufacture and importation volume for any domestic use greater than 4 times the yearly volume specified in the PMN for the substance.

(3) Use of the substance in a consumer product.

After careful consideration of all public comments on the proposed SNUR, the Agency has decided to issue the final rule with several changes from the proposed version. Based upon toxicological and background information submitted to the public docket by the PMN submitter, the Agency no longer has concerns for use of the PMN substance in consumer uses or without a strict requirement for dermal protection. In the final SNUR, the significant new uses defined above in the proposed SNUR will apply to DGDE only when containing more than 5 percent of the above mentioned isomer, thereby addressing EPA's primary health concerns for the toxicity of the isomer. Accordingly, to reflect the Agency's concern for the isomer, the production volume limit contained in the proposed rule has been intentionally omitted and the Agency is now requiring notice of any volume of the substance as defined by this final rule when used either without dermal protection or in consumer uses.

1. *Comment*. The PMN submitter argues that the dermal protection provision is unnecessary since its material safety data sheet (MSDS) for DGDE provides adequate warnings and guidance as to appropriate protective equipment. In addition, the company stated that its product stewardship program and corporate responsibility ethic also obviate the need for this provision.

*EPA Response*. Hazard communication is not equivalent to, and does not ensure, the actual use of protective equipment; it is merely a means of encouragement towards that end. The Agency did not take issue with the adequacy of the warnings and information on how to protect against dermal exposure to DGDE that is contained in the PMN submitter's MSDS. It is important to note, however, that the PMN submitter's MSDS is in its current form, which EPA now considers satisfactory, as a result of glove testing required by the Agency. The company's research safety sheet for DGDE, which is the precursor to its MSDS, contained no special handling precautions to ensure that individuals who might come into

contact with the substance would use adequate dermal protection.

The dermal protection requirement is designed to ensure that all manufacturers and processors of DGDE, with the isomer of concern present at greater than 5 percent, provide workers with adequate protection against dermal exposure to the substance. While a company's product stewardship program and Responsible Care® ethic cannot in themselves alleviate the need for this provision, the Agency will consider, as explained in the proposed rule, the product stewardship program of a future significant new use notice (SNUN) submitter in its decision on how to regulate DGDE.

Ultimately, however, the Agency must ensure that all workers who might be exposed to DGDE containing greater than 5 percent by weight of the isomer propane 2,2′-oxybis[1-methoxy-, at all potential manufacturing sites and downstream locations, are adequately protected, not just warned, against its health risks. Hence, the Agency retains this provision in the final SNUR as proposed.

2. *Comment.* The PMN submitter informed the Agency that the company's annual domestic production of DGDE has exceeded 4 times the yearly volume specified in the PMN and expects this to continue. The comment provides specific information on the quantities of DGDE manufactured in the United States solely for export (claimed by the PMN submitter as confidential business information), which accounts for the exceedance of the volume limit contained in the proposed SNUR. The comment also states that the Agency was informed about the company's production levels during the PMN review period.

*EPA Response.* The limitation on the isomeric make-up of DGDE effectively addresses any Agency concerns for risk, regardless of ultimate production volume. For more information on the isomeric make-up of the PMN submitter's DGDE formulation, see the discussion in the proposed rule (59 FR 43079, August 22, 1994).

3. *Comment.* The PMN submitter states that the Agency has never defined under TSCA what a ''consumer use'' is and that, therefore, the proposed SNUR provision requiring notice prior to use in a consumer product is vague and unenforceable.

*EPA Response.* The Agency disagrees with the PMN submitter's assertion that ''use in a consumer product'' is a vague concept and an inappropriate SNUR provision. Although the Agency may not have specifically defined the term ''consumer use'' under TSCA, the definitions section for SNURs, 40 CFR 721.3, defines both *consumer* and *consumer product.* The meaning of ''consumer use'' is clear from the definition of these terms.

*Consumer* is defined at 40 CFR 721.3 as a private individual who uses a chemical substance or any product containing the chemical substance in or around a permanent or temporary household or residence, during recreation, or for any personal use or enjoyment. *Consumer product* is described as a chemical substance that is directly, or as part of a mixture, sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in recreation. It is plain from reading these definitions what the Agency intends when it designates ''use of the PMN substance in a consumer product'' as a significant new use. It is the regulated community's responsibility to know, through research and development activities, market research or other means, whether its products will be or are likely to be used in consumer applications. The Agency believes it is reasonable to assume that companies have knowledge of potential distribution patterns and uses for their products. In deciding whether it is appropriate to submit a SNUN to the Agency, a company should use a standard based on reasonableness. If the company believes or has reason to believe, based on reasonably ascertainable information obtained in the course of conducting its business, that the substance will or will likely be used by a consumer, they should comply with the SNUR requirement. If there is any uncertainty as to the provision's applicability in a given case or need for clarification of the definitions, the company should contact the Agency for guidance.

Glycol ethers, like DGDE, are present in many consumer products, some of which, like hand lotions, may involve significant contact with skin and other types of human exposures. Since the Agency continues to have concerns when the use of DGDE in a consumer product may expose the general population to a potentially significant health risk, the final rule requires submission of a SNUN prior to any use of DGDE, as defined by this SNUR, in a consumer product.

4. *Comment.* As part of its public comments on the SNUR, the PMN submitter provided a substantial amount of information, in the form of toxicity studies and background documents, on the potential toxicity of the PMN substance and related chemicals. The company believes that the Agency has taken a more restrictive approach with DGDE than it has in the past with similar PMN substances.

*EPA Response.* As stated above, the Agency has decided to limit applicability of this restrictive approach only to DGDE with greater than 5 percent by weight of the isomer, propane, 2,2′-oxybis[1-methoxy- (CAS No. 189354–80–1). Nearly all of the company's toxicological and background information was available to the Agency during the PMN review period and incorporated into EPA's risk assessment of DGDE, which is available in the public record (the risk assessment document in the public record, however, has not been updated with studies submitted following the PMN review period). While EPA does not intend to comment on each toxicity study and background document in this response, a brief review of the Agency's hazard assessment of DGDE, especially as it compares to similar compounds, should be helpful in understanding the regulatory approach selected for this substance.

In its comments, the PMN submitter mentions two PMN substances—both propylene glycol monoethers—that were not regulated by the Agency. From the standpoint of toxicity, data indicate that the P-series glycol ethers should be broken down into two groups: secondary and primary alcohols. Because of DGDE's isomeric ratio and the way it is metabolized, the substance has the potential to form much more primary alcohol *in vivo* (i.e., 2-methoxy-1-propanol, 2-(2-methoxypropoxy)-1-propanol, and 2-(2-methoxy-1-methylethoxy)-1-propanol) than is present in the monoethers, which are generally 90–95 percent secondary alcohol, and 5–10 percent primary alcohol. Available toxicity data show that the primary alcohols are more toxic than the secondary alcohols.

The test data provided by the PMN submitter indicate that DGDE's potential human health hazard falls between the ethylene glycol ethers it will replace, namely, glyme (1,2-dimethoxyethane) and diglyme (1-methoxy-2-methoxyethoxyethane) and the P-series glycol ethers mentioned in the company's comments. The data indicate no observable effects levels (NOELs) from the toxicity studies on DGDE, glyme, and diglyme are similar, but the effects seen with glyme and diglyme are more severe. The toxic effects observed with DGDE and the P-series mono glycol ethers are similar, but the NOEL for the P-series mono glycol ethers is approximately 10–fold higher, indicating relatively less toxicity for the P-series.

In other words, if the Agency were ranking the glycol ethers currently under discussion according to relative toxicity/hazard, the glycol ethers would fall in the following order (from high to low): E-series glycol ethers like glyme and diglyme; then DGDE, the PMN substance; and lastly the P-series glycol ethers, such as those referenced by the PMN submitter in its comments. The Agency's risk assessments have reflected and have been consistent with this relative hazard ranking, allowing for variations in the degree of exposure/use patterns, and its regulatory decisions have corresponded as well.

5. *Comment*. The PMN submitter and two other commenters, the only other parties to address the proposed rule, objected to regulation of DGDE because the substance represents an improvement over existing glycol ethers in both performance and safety characteristics. They believe that the manufacture or commercial availability of DGDE should not be restricted in any way.

*EPA Response*. While the Agency acknowledges that the PMN submitter's DGDE may hold safety advantages over some substances for which it is intended to substitute, the extent of this advantage, and whether there is an advantage at all, depends in large part on the formulation of the substance. Consequently, the Agency has modified the proposed SNUR to apply only to DGDE with greater than 5 percent by weight of the isomer, propane, 2,2′-oxybis[1-methoxy- (CAS No. 189354–80–1). Specifically, the ''safer substitute'' qualities of DGDE are a function, as mentioned earlier and discussed in the proposed SNUR, of the percentage mix of the three isomers of which it is constituted and also of the hazard/exposure profiles of the specific potential substitutes.

## IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated under this SNUR after the proposed date of this rule will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing of a significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

## V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50621B).

## VI. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50621B (including 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 confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

## VII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the Agency has determined that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## VIII. 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 in 40 CFR Part 721**

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 28, 1997.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR part 721 is amended as follows:

## PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.3550 to subpart E to read as follows:

**§ 721.3550 Dipropylene glycol dimethyl ether.**

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as dipropylene glycol dimethyl ether (PMN P–93–507; CAS No. 11109–77–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. This class 2 substance is exempt from the notification requirements of this rule if it contains less than 5 percent by weight of the specific isomer, propane, 2,2′-oxybis[1-methoxy- (CAS No. 189354–80–1), which is one of the possible products of the manufacturing process for PMN P–93–507.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* The following recordkeeping requirements specified in § 721.125 (a), (b), (c), (d), and (e) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 97–29153 Filed 11–3–97; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 42 and 61

**[CC Docket No. 96–61; FCC 97–293]**

## Policy and Rules Concerning the Interstate, Interexchange Marketplace

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Order on Reconsideration (Order) released August 20, 1997 reconsiders the Second Report and Order in this docket (61 FR 59340 (November 22, 1996)). The Order modifies the Second Report and Order by: adopting permissive detariffing for interstate, domestic, interexchange direct-dial services; adopting permissive detariffing for the first 45 days of service to new customers that contact the local exchange carrier to choose their primary interexchange carrier; and eliminating the requirement that nondominant interexchange carriers make publicly available information concerning current rates, terms, and conditions for all of their interstate, domestic, interexchange services, except in the case of dial-around 0+ services from aggregator locations.

**EFFECTIVE DATE:** December 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Lisa Choi, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order adopted August 15, 1997, and released August 20, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., NW, Room 239, Washington, DC The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–293.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW, Washington, DC 20036.

### Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, the Order contains a Final Regulatory Flexibility Analysis on Reconsideration which is set forth in the Order on Reconsideration. A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order on Reconsideration with regard to small entities. This analysis includes: (1) A succinct statement of the need for, and objectives of, the Commission's decisions in the Order on Reconsideration; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order on Reconsideration as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order on Reconsideration will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order on Reconsideration, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; (5) a description of the steps the Commission has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the Order on Reconsideration and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

The rules adopted in this Order on Reconsideration are necessary to implement the provisions of the Telecommunications Act of 1996.

### Paperwork Reduction Act

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L.104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

*OMB Control Number:* 3060–0704.

*Expiration Date:* February 28, 1998.

*Title:* Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

*Respondents:* Business or other for-profit.

Public reporting burden for the collection of information is estimated as follows:

| Information collection | No. of respondents (approx.) | Annual hour burden per response | Total annual burden |
|---|---|---|---|
| Detariffing* | 0 | 0 | 0. |
| Certification requirement | 519 | 0.5 hour | 259.5. |
| Tariff cancellation requirement: completely cancel tariffs | 519 | 2 hours per page (1,252 pages) (one-time). | 2,504 (one-time). |
| Tariff cancellation requirement: revise mixed tariffs to remove domestic services | 519 | 2 hours per page (36,047 pages) (one-time). | 72,094 (one-time). |
| Information disclosure requirement** | 0 | 0 | 0. |
| Recordkeeping requirement | 519 | 2 hours | 1,038. |

*The Commission affirmed its decision in the Second Report and Order to eliminate the requirement that nondominant interexchange carriers file tariffs for interstate, domestic, interexchange services. In the Order, the Commission has decided to (1) permit nondominant interexchange carriers to file tariffs for the provision of dial-around 1+ services using a nondominant interexchange carrier's carrier access code; (2) permit nondominant interexchange carriers to file tariffs for the initial 45 days of domestic, interstate, interexchange service, or until there is a written contract between the carrier and the customer, whichever is earlier; and (3) eliminate the public disclosure requirement.

**The Commission has eliminated the information disclosure requirement.

*Total Annual Burden:* 75,895.5 hours, of which 74,598 will be one-time.

*Frequency of Response:* Annual, except for tariff cancellation requirement, which will be one-time, and on occasion.

*Estimated Annual Reporting and Recordkeeping Costs:* $435,000.

*Needs and Uses:* The attached item affirms the Commission's previous decision in the Second Report and Order to eliminate the requirement that nondominant interexchange carriers file tariffs for interstate, domestic, interexchange telecommunications services. In this Order, the Commission has eliminated this information disclosure requirement. In addition, the Commission has reconsidered its decision to require affected carriers to maintain, and to make available to the public in at least one location, information concerning their rates, terms and conditions for all of their interstate, domestic, interexchange services.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

**Synopsis of Order on Reconsideration**

*I. Introduction*

1. On October 29, 1996, the Commission adopted the *Second Report and Order* (61 FR 59340 (November 22, 1996)) in its proceeding reviewing the regulation of interstate, domestic, interexchange telecommunications services in light of the passage of the Telecommunications Act of 1996 (1996 Act) and the increasing competition in the interexchange market over the last decade. Consistent with the intent of the 1996 Act to provide a ''pro-competitive, deregulatory'' national policy framework for telecommunications and information technologies and services, Congress directed the Commission to forbear from applying any provision of the Communications Act or the Commission's regulations if certain conditions are met.

2. We determined in the *Second Report and Order* that the statutory forbearance criteria in section 10 of the Communications Act were met for complete detariffing (''Complete detariffing'' refers to a policy of neither requiring nor permitting nondominant interexchange carriers to file tariffs pursuant to section 203 of the Communications Act for their interstate, domestic, interexchange services. ''Permissive detariffing'' refers to a policy of allowing, but not requiring, nondominant interexchange carriers to file tariffs for such services.) of the interstate, domestic, interexchange services offered by nondominant interexchange carriers, and, therefore, that we would no longer allow such carriers to file tariffs pursuant to section 203 of the Communications Act for their interstate, domestic, interexchange services, with the limited exception of AT&T's provision of 800 directory assistance and analog private line services. At the same time, we recognized that a transition period was necessary to allow nondominant interexchange carriers time to adapt to complete detariffing. We therefore ordered all nondominant interexchange carriers to cancel their tariffs for such services within nine months from the effective date of the *Second Report and Order.* We maintained the tariffing requirement for the international portion of bundled domestic and international service offerings. We further required nondominant interexchange carriers to: (1) File an annual certification stating that they are in compliance with the geographic rate averaging and rate integration requirements of section 254(g) of the Communications Act; (2) maintain supporting documentation on the rates, terms, and conditions of their interstate, domestic, interexchange services that they could submit to the Commission within ten business days upon request; and (3) make publicly available information concerning current rates, terms, and conditions for all of their interstate, domestic, interexchange services. The basis for the information disclosure requirement was to ensure that the public was provided with the information necessary to determine whether a nondominant interexchange carrier was adhering to the rate averaging and rate integration requirements of section 254(g) of the Communications Act. In addition, we determined that a public disclosure requirement would promote the public interest by making it easier for consumers, including resellers, to compare service offerings.

3. Our actions in the *Second Report and Order* were intended to advance Congress' pro-competitive and deregulatory objectives by eliminating regulatory requirements that the Commission determined were no longer necessary to protect consumers or serve the public interest. We concluded that our actions would foster increased competition in the market for interstate, domestic, interexchange services by deterring tacit price coordination, eliminating the possible invocation of the ''filed-rate'' doctrine, and establishing market conditions that more closely resemble an unregulated environment. We found that elimination of the possible invocation of the ''filed-rate'' doctrine is in the public interest

because, pursuant to the ''filed-rate'' doctrine articulated by the courts, where a filed tariff rate, term, or condition differs from a rate, term, or condition in a non-tariffed carrier-customer contract, the carrier is required to assess the tariff rate, term, or condition. *See Armour Packing Co.* v. *United States,* 209 U.S. 56 (1908); *American Broadcasting Cos., Inc.* v. *FCC,* 643 F.2d 818 (D.C. Cir. 1980); *see also Aero Trucking, Inc.* v. *Regal Tube Co.,* 594 F.2d 619 (7th Cir. 1979); *Farley Terminal Co., Inc.* v. *Atchison, T. & S.F. Ry.,* 522 F.2d 1095 (9th Cir.), *cert. denied,* 423 U.S. 996 (1975). Consequently, if a carrier unilaterally changes a rate by filing a tariff revision, the newly filed rate becomes the applicable rate for all customers of that service unless the revised rate is found to be unjust, unreasonable, or unlawful under the Communications Act. *See* 47 U.S.C. 201(b); *see also Maislin Industries, U.S., Inc.* v. *Primary Steel, Inc.*, 497 U.S. 116 (1990).

4. Several parties appealed the *Second Report and Order* to the United States Court of Appeals for the District of Columbia Circuit and filed motions requesting that the court stay the Second Report and Order pending judicial review. On February 13, 1997, the court granted these motions. The Commission's rules adopted in this proceeding, therefore, are stayed until the court issues its determination on the merits of the appeal. Accordingly, nondominant interexchange carriers are currently required to file tariffs for their interstate, domestic, interexchange services.

5. In addition, eleven parties filed petitions requesting that we reconsider or clarify the rules we adopted in the Second Report and Order. The United States Court of Appeals for the District of Columbia Circuit deferred the briefing schedule in the appeal of the rules adopted in the *Second Report and Order* to allow the Commission to act on these petitions for reconsideration. *MCI Telecommunications Corp.* v. *FCC,* No. 96–1459 (D.C. Cir. April 4, 1997). The court directed the parties to file motions to govern further proceedings 60 days after April 4, 1997. *Id.* The Commission issued a public notice to establish a pleading cycle for the issues raised in the petitions for reconsideration and clarification. The public notice sought comments on or oppositions to the petitions and replies. *Policy and Rules Concerning the Interstate, Interexchange Marketplace,* CC Docket No. 96–61, Public Notice, Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings (released January 7, 1997). For convenience, we will cite the parties' filings in these three phases as petitions, comments, and replies, respectively. For the reasons set forth below, we grant requests for reconsideration on three issues. Specifically, we modify the *Second Report and Order* by: (1) Adopting permissive detariffing for interstate, domestic, interexchange direct-dial services to which end-users obtain access by dialing a carrier's access code (CAC); (2) adopting permissive detariffing for the first 45 days of service to new customers that contact the local exchange carrier (LEC) to choose their primary interexchange carrier (PIC); and (3) eliminating the requirement that nondominant interexchange carriers make publicly available information concerning current rates, terms, and conditions for all of their interstate, domestic, interexchange services, except in the case of dial-around 0+ services from aggregator locations, pursuant to section 226 of the Communications Act. In another proceeding, we are considering the issue of forbearing from applying section 226, which requires operator service providers to file informational tariffs. *See Billed Party Preference for InterLATA 0+ Calls,* CC Docket No. 92–77, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 7274 (1996); Public Notice, DA 96–1695 (released October 10, 1996) (seeking further comment). We deny all of the other petitions for reconsideration. We also make a number of clarifications in this Order on Reconsideration.

## II. Detariffing Issues

### *A. Forbearance From Tariff Filing Requirements for the Interstate, Domestic, Interexchange Services of Nondominant Interexchange Carriers*

#### i. Background

6. In the *Second Report and Order,* we concluded that the statutory forbearance criteria in section 10 were satisfied, based on our findings that: (1) Tariffs are not necessary to ensure that the rates, practices, classifications, and regulations of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory; (2) tariffs for interstate, domestic, interexchange services of nondominant interexchange carriers are not necessary to protect consumers; and (3) complete detariffing of interstate, domestic, interexchange services provided by nondominant interexchange carriers, and not permissive detariffing of such services, is in the public interest. We concluded that permissive detariffing of interstate, domestic, interexchange services provided by nondominant interexchange carriers is not in the public interest because it: (1) Would not necessarily eliminate possible invocation of the ''filed-rate'' doctrine; (2) would create a risk that nondominant interexchange carriers would file tariffs to send price signals and to manipulate prices; and (3) would impose administrative costs on the Commission, which must maintain and organize tariff filings for public inspection. We further concluded that the Commission has the authority under section 10 to prohibit carriers from filing tariffs. Accordingly, pursuant to section 10, we determined that we must forbear from applying section 203 tariff filing requirements to the interstate, domestic, interexchange services offered by nondominant interexchange carriers and not permit nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange services, with the limited exception of AT&T's provision of 800 directory assistance and analog private line services.

#### ii. Positions of the Parties

7. Frontier, Telecommunications Resellers Association (TRA), and Telco petition the Commission to reconsider its decision to adopt complete detariffing, and urge the Commission to adopt permissive detariffing for the interstate, domestic, interexchange services offered by nondominant interexchange carriers. TRA further argues that the increased costs and burdens of a complete detariffing regime will adversely affect small and mid-sized nondominant interexchange carriers, which have fewer resources. TRA proposes specifically that the Commission adopt permissive detariffing in conjunction with a carrier-administered electronic tariff filing system, thereby relieving the Commission of the burden of administering and maintaining tariff filings. AT&T, CompTel, SBC, U S WEST, and WorldCom also support permissive detariffing.

8. AT&T, CompTel, and WorldCom argue that section 10 only authorizes the Commission to refrain from requiring tariffs, and does not empower the agency to prohibit carriers from voluntarily complying with section 203. These parties, and others, also challenge the Commission's determination that permissive detariffing is not in the public interest. Specifically, these parties argue that: (1) The ''filed-rate'' doctrine would no longer apply if the Commission adopted a permissive detariffing regime because the tariffed

rate would no longer be the only permissible rate; (2) even if the ''filed-rate'' doctrine would continue to apply, that doctrine and carriers' ability to limit their liability through tariff provisions, benefit consumers because the terms of the carrier-customer relationship are certain; (3) price coordination would be difficult, if not impossible, with permissive detariffing, because carriers would at best have fragmentary information about their competitors' rates, terms, and conditions; (4) requiring nondominant interexchange carriers to make price and service information publicly available allows carriers to coordinate prices as easily as with filed tariffs; (5) even under a system of permissive detariffing, a carrier could not refuse to accommodate a customer's request for services tailored to its specific needs on the ground that the request is beyond the scope of the carrier's tariff; (6) complete detariffing significantly increases transactional and administrative costs, especially for small carriers, by forcing nondominant interexchange carriers to conclude written agreements with every customer and notify them of modifications to the carriers' rates, terms, and conditions; and (7) permissive detariffing, or even mandatory tariffing, promotes vigorous competition to an even greater extent than complete detariffing, because carriers can react to market conditions quickly and without appreciable costs by filing a new tariff.

9. Ad Hoc Users Committee, American Petroleum Institute (API), and the Television Networks oppose the petitions of TRA and Frontier, at least to the extent that they request reconsideration of complete detariffing of individually-negotiated service arrangements. Ad Hoc Users Committee and API contend that the petitions for reconsideration should be denied because they merely repeat arguments previously made and rejected by the Commission in the *Second Report and Order*. In addition, these parties argue that complete detariffing, and not permissive detariffing, of interstate, domestic, interexchange services offered by nondominant interexchange carriers is in the public interest, because: (1) The ''filed-rate'' doctrine would continue to apply under a system of permissive detariffing; (2) the ''filed-rate'' doctrine harms consumers because it allows carriers unilaterally to alter or abrogate agreements; (3) complete detariffing ensures that carriers would no longer be able to refuse to accommodate a customer's request for services tailored to its specific needs on the grounds that the request conflicts with the carriers' tariffs; and (4) tariffs delay rapid responses to customer demands. API further argues that the 1996 Act gives the Commission authority to prohibit tariff filings.

iii. Discussion

10. We deny the petitions of Frontier, Telco, and TRA urging us to adopt permissive detariffing for all interstate, domestic, interexchange services. As discussed *infra*, arguments presented by these petitioners, and others, have persuaded us that permissive detariffing is warranted in certain limited circumstances. Specifically, we find that permissive detariffing is warranted for: (1) Interstate, domestic, interexchange direct-dial services to which end-users obtain access by dialing a carrier's CAC (dial-around 1+ services); (A CAC enables callers to reach any carrier (presubscribed or otherwise) from any telephone. During the current transition from five to seven digit CACs, both five digit CACs (10XXX) and seven digit CACs (101XXXX) are in use. On April 11, 1997, the Commission determined that the transition will end on January 1, 1998. *See Administration of the North American Numbering Plan, Carrier Identification Codes (CICs)*, CC Docket 92–237, Second Report and Order, 62 FR 19056 (April 18, 1997), *stay and recon. pending.* Thus, after January 1, 1998, only seven digit CACs may be used.) and (2) interstate, domestic, interexchange services provided by a nondominant interexchange carrier for the initial 45 days of service or until there is a written contract between the carrier and the customer, in those limited circumstances in which a prospective customer contacts the LEC to select an interexchange carrier or to initiate a PIC change (LEC-implemented new customer services). Aside from these two limited categories of service, the petitions and comments do not present any arguments that were not considered and addressed in the *Second Report and Order*. Thus, we find no basis upon which to reconsider our determination that the statutory criteria are met for completely detariffing all other interstate, domestic, interexchange services of nondominant interexchange carriers, except for dial-around 0+ services from aggregator locations, pursuant to section 226 of the Communications Act.

11. In the *Second Report and Order*, we extensively considered and rejected the argument that the Commission does not have statutory authority under section 10 to adopt complete detariffing. No new arguments have been presented that persuade us to reconsider our decision. Therefore, we reaffirm our earlier conclusion that Congress, in section 10, provided the Commission with broad forbearance authority that enables the agency to eliminate tariff filings under section 203.

12. In the *Second Report and Order*, we also considered all of the arguments advanced by those parties now urging us to reconsider our determination that permissive detariffing is in the public interest and complete detariffing is not. With the exception of dial-around 1+ services and LEC-implemented new customer services, we affirm our conclusion in the *Second Report and Order* that permissive detariffing of interstate, domestic, interexchange services offered by nondominant interexchange carriers is not in the public interest, for the reasons set forth in our prior order. We are not persuaded that a permissive detariffing regime would eliminate possible invocation of the ''filed-rate'' doctrine. In a permissive detariffing regime, a nondominant interexchange carrier may choose to file a tariff for an interstate, domestic, interexchange service, even if the carrier has signed an underlying contract with the customer. If a carrier files a tariff for an interstate, domestic, interexchange service with the Commission, whether on a permissive or mandatory basis, section 203(c) requires the carrier to provide service at the rates, and on the terms and conditions, set forth in the tariff until the carrier files a superseding tariff cancelling, or changing the rates, terms, and conditions of the tariffed offering. Thus, if the tariffed rates, terms, and conditions differ from those in the contract, section 203(c), in all likelihood, requires the carrier to provide service at the rates, and on the terms and conditions, set forth in the tariff. Because the ''filed-rate'' doctrine is a judicially-created doctrine, the determination of how to apply the doctrine in a permissive detariffing regime when the tariffed rates, terms, or conditions differ from those contained in a contract must necessarily be left to the courts. *See supra* paragraph 3. Only with a complete detariffing regime, under which the carrier-customer relationship would more closely resemble the legal relationship between service providers and customers in an unregulated, competitive environment, can we definitively avoid the negative consequences for consumers of the ''filed-rate'' doctrine. The Common Carrier Bureau, on numerous occasions, has issued Orders Designating Issues for Investigation to examine whether a carrier's proposed unilateral changes in a tariff meet the ''substantial cause''

standard applied by the Commission. *See AT&T Contract Tariff No. 374*, Transmittal Nos. CT 2952 and CT 3441, Order Designating Issues for Investigation, DA 95–1784 (Common Carrier Bureau released August 11, 1995); *AT&T Communications Contract Tariff No. 360*, Transmittal No. CT 3076, CC Docket No. 95–146, Order Designating Issues for Investigation (Common Carrier Bureau released September 8, 1995).

13. Moreover, we reject carriers' arguments that the ''filed-rate'' doctrine benefits customers by creating certainty in the carrier-customer relationship. In fact, the ''filed-rate'' doctrine creates uncertainty in the carrier-customer relationship. Invocation of the ''filed-rate'' doctrine can be especially harmful to consumers who have signed long-term service contracts with interexchange carriers. As Ad Hoc Users Committee, API and the Television Networks point out, the doctrine permits interexchange carriers subsequently to file a tariff that differs from the long-term contract, and if justified by substantial cause, unilaterally to alter or abrogate their contractual obligations in a manner that is not available in most commercial relationships and that undermines consumers' legitimate business expectations. The ''filed-rate'' doctrine also harms residential and small business consumers who utilize mass market services and do not enter into long-term service arrangements. Such customers may purchase these mass market services in response to representations made by sales agents of the interexchange carrier or advertisements. In addition, such customers may assume the interexchange carrier will not modify its rates without actual notice to the customer. In the event of a dispute about the representations made by a sales agent, or a subsequent modification to an interexchange carrier's rates, terms, or conditions without actual notice to customers, a customer would be bound by the tariffed rates, terms, and conditions.

14. Moreover, we reaffirm our finding that permissive detariffing would facilitate tacit price coordination, because nondominant interexchange carriers could file tariffs to send price signals. On further reflection, however, we are persuaded by the comments of AT&T, TRA, and Telco, which maintain that complete detariffing, in conjunction with a public disclosure requirement, may not effectively impede tacit price coordination, because a nondominant interexchange carrier's rates, terms, and conditions for its interstate, domestic, interexchange services would still be available to its competitors in one location. We adopted the public disclosure requirement primarily to aid enforcement of the geographic rate averaging and rate integration requirements of section 254(g). In response to petitions asking us to reconsider the information disclosure requirements, we determine, as discussed below, that we can effectively meet our obligations to enforce section 254(g) without the public disclosure requirement. We conclude that complete detariffing, without a public disclosure requirement, will more effectively deter tacit price coordination.

15. We recognized in the *Second Report and Order* that complete detariffing would change in significant respects the manner in which nondominant interexchange carriers conduct their business. We considered the arguments raised by the parties in their petitions for reconsideration and comments regarding costs and administrative burdens associated with complete detariffing that would be avoided if carriers were allowed to file tariffs. With the exception of casual calling services and LEC-implemented new customer services, these arguments either essentially restate claims that were advanced in the initial phase of this proceeding in response to the NPRM and were rejected in the *Second Report and Order*, or are new, but unsupported by credible evidence. For example, Frontier, CompTel and SBC contend, as numerous parties did in earlier comments in this proceeding, that complete detariffing will increase the costs and administrative burdens on nondominant interexchange carriers because they will have to enter into individually negotiated contracts with every end user in order to establish a binding contractual relationship. Commenters assert that the costs associated with establishing an enforceable contractual relationship in the absence of tariffs will be ''enormous,'' ''significant,'' and ''substantial;'' however, they do not provide any evidence in support of these claims. In short, these parties did not raise any new arguments or provide any credible new evidence concerning the costs of providing interstate, domestic, interexchange service in a detariffed environment, as required by section 405 of the Communications Act. We, therefore, affirm our conclusion, for the reasons set forth in the *Second Report and Order*, that requiring nondominant interexchange carriers to conduct their businesses as do other businesses in unregulated markets will not substantially increase their costs.

16. In contrast, parties offered additional credible evidence on reconsideration concerning the costs and burdens to carriers of providing dial-around 1+ services and LEC-implemented new customer services in the absence of tariffs. As discussed below, we reconsider our decision in light of this evidence, and determine that permissive detariffing in these specific, limited instances is in the public interest. With respect to other interstate, domestic, interexchange services, we affirm our finding that the benefits and pro-competitive effects of complete detariffing outweigh any increased transactional or administrative costs resulting from the shift to complete detariffing.

17. Finally, we reject the argument that permissive detariffing or mandatory tariffing would promote competition more effectively than complete detariffing. As discussed above, allowing nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services creates the risk that such carriers will use these tariffs to send price signals in an effort to manipulate prices. Moreover, for the reasons discussed above and in the *Second Report and Order*, requiring nondominant interexchange carriers to conduct their businesses as do other businesses in unregulated markets will not substantially increase their costs. We, therefore, conclude that complete detariffing of the interstate, domestic, interexchange services of nondominant interexchange carriers is in the public interest, with the exception of dial-around 1+ services, LEC-implemented new customer services and section 226 tariffs associated with dial-around 0+ calls.

*B. Casual Calling Services*

i. Background

18. In contrast to other interstate, domestic, interexchange services, casual calling services are those services that do not require the calling party to establish an account with an interexchange carrier or otherwise presubscribe to a service. ''Casual calling'' refers to services such as collect calling, the use of a third-party credit card, or dial-around through the use of an access code. Casual calling does not include services for which customers presubscribe to an interexchange carrier or otherwise establish an account with an interexchange carrier prior to using the service, such as by obtaining a calling card, in advance, from an interexchange carrier. References to

casual calling in this reconsideration do not pertain to section 226 informational tariffs. We concluded in the *Second Report and Order* that the record did not support a finding that complete detariffing would cause nondominant interexchange carriers to cease offering such services. Rather, we found that nondominant interexchange carriers have options other than tariffs by which they can ensure the establishment of a contractual relationship with casual callers that would legally obligate such callers to pay for the telecommunications service they use and bind them to the carriers' terms and conditions. *Second Report and Order* at 59350, paragraph 58. We stated that a casual caller providing billing or payment information, such as a credit card or billing number, and completing use of the telecommunications service, may be deemed to have accepted a legal obligation to pay for any such services rendered. We also noted that a carrier could alternatively seek recovery under an implied-in-fact contract theory. An implied-in-fact contract ''refers to that class of obligations which arises from mutual agreement and intent to promise, when the agreement and promise have simply not been expressed in words. Despite the fact that no words of promise or agreement have been used, such transactions are nevertheless true contracts, and may properly be called inferred contracts or contracts implied in fact.'' 1 Williston on Contracts, § 1.5, at 20–21 (4th ed. 1990); *see also* 1 Arthur L. Corbin, et al., Corbin on Contracts, § 1.19, at 55–57 (rev. ed. 1993) (stating that an implied-in-fact contract requires the same terms as an express contract and those terms are determined through a process of implication and inference). We further concluded on the basis of the record before us at that time that the competitive benefits of complete detariffing of nondominant interexchange carriers' interstate, domestic, interexchange service outweighed any potential increased costs resulting from detariffing such services.

ii. Positions of the Parties

19. AT&T, Frontier, Telco, and TRA petition the Commission to reconsider its decision to adopt complete detariffing for casual calling services and argue that the Commission, instead, should allow nondominant interexchange carriers to file tariffs for these services. CompTel, Television Networks, SBC, Sprint and WorldCom support this request. TRA and Sprint contend that unlike most other businesses, common carriers are required by statute to provide service upon demand prior to payment for their services. AT&T argues that allowing nondominant interexchange carriers to file tariffs for casual calling services is the simplest and most efficient means of ensuring a contractual relationship between carriers and casual callers. These parties, and others, contend that, in the absence of tariffs, carriers would need to develop costly and burdensome mechanisms to ensure the establishment of a legal relationship with casual callers to obligate them to pay for the services they receive and to bind casual callers to the terms and conditions of the service, including limitations on liability.

20. Several of these parties also maintain that the alternatives to tariffs that the Commission suggested in the *Second Report and Order* are insufficient to ensure that carriers have a contractual basis for enforcing their rates, terms, and conditions for casual calling services. Specifically, these parties assert that neither the implied-in-fact contract theory nor requiring customers to provide credit card information or a billing number guarantees that a carrier will be able to recover its charges for calls made by casual callers, because the carrier will have to demonstrate that the parties agreed upon definite terms. AT&T, Sprint, CompTel, and SBC assert that without tariffs, interexchange carriers would have to resort to costly, repetitive, state-by-state litigation to secure payment for services rendered. They assert that the outcome of such litigation is uncertain, and that the associated costs would inevitably be passed on to consumers.

21. AT&T argues that nondominant interexchange carriers, to ensure the establishment of a contractual relationship with a casual caller, would likely need to provide casual callers with the rates, terms, and conditions, or at a minimum, the option of obtaining the rates, terms, and conditions, prior to completion of the call. AT&T contends that using a recorded announcement that provides the rates, terms, and conditions of the call would greatly inconvenience callers by adding a delay in call set-up time of between 1.5 and 2 minutes. AT&T further maintains that even providing casual callers with the option of hearing such information would add between 7 and 9 seconds to the call set-up time. AT&T argues that this time delay is especially burdensome to the casual caller because in most instances, the caller is placing the call from a telephone away from the home in circumstances that necessitate simplicity, convenience and speed. Moreover, AT&T contends that these mechanisms would increase by approximately $0.33 to $0.77 the cost of each call. AT&T asserts that the costs would be higher if the nondominant interexchange carrier announces the rates, terms, and conditions and lower if the carrier provides the option of hearing the information. AT&T further argues that it may have underestimated this incremental cost per call, because it was unable to calculate the cost of playing an announcement to dial-around callers. AT&T also argues that computers and fax machines are unable to recognize the announcement, and, therefore, that any announcement would interfere with a caller's ability to use casual calling services for computer access or sending faxes. AT&T states, further, that an announcement of the rates, terms, and conditions transmitted to a computer or fax machine may be insufficient to create an enforceable contractual relationship with the caller.

22. AT&T and Sprint also claim that a recorded announcement may not even be an option for callers who use dial-around 1+ services, because interexchange carriers may be unable to distinguish these calls from direct dial 1+ calls placed from telephones presubscribed to that carrier. Letter from Marybeth M. Banks, Director, Federal Regulatory Affairs, Sprint, to William F. Caton, Acting Secretary, Federal Communications Commission, April 30, 1997 (Sprint April 30 *Ex Parte*); Letter from Marybeth M. Banks, Director, Federal Regulatory Affairs, Sprint, to William F. Caton, Acting Secretary, Federal Communications Commission, March 21, 1997 (Sprint March 21 *Ex Parte*). Direct-dial 1+ calls are those interstate, interexchange calls that an end-user makes using his or her presubscribed interexchange carrier. A caller completes this call by simply dialing 1 before the number being called. In contrast, dial-around 1+ calls are generally those made by end-users to access the interstate, domestic, interexchange services of an interexchange carrier other than the carrier presubscribed to that line. Once an end-user dials a carrier's CAC, the caller is connected to that interexchange carrier, and may place a 1+ (dial-around 1+) or a 0+ (dial-around 0+) call using the services of that interexchange carrier. End-users may use a dial-around service to take advantage of a lower rate offered by a competing interexchange carrier for that specific call, or during outages of its presubscribed interexchange carrier's network. Sprint contends that the technology to distinguish between these two types of

calls exists, but that this feature is not universally offered by all LECs. Sprint contends that only those LECs with switches capable of providing signalling using Signalling System 7 (SS7) protocol are able to provide this feature. Moreover, Sprint asserts that several LECs that have switches capable of providing SS7 do not offer this feature. Sprint and AT&T further argue that the cost of implementing this technology, where available, is significant and inevitably will be passed on to consumers.

23. Several parties state that the increase in costs related to ensuring that a legally enforceable relationship is established with casual callers in the absence of tariffs may make it difficult for carriers effectively to provide casual calling services, and may ultimately result in carriers ceasing to offer these services altogether.

24. Telco and SBC also argue that possible invocation of the ''filed-rate'' doctrine—a primary reason the Commission adopted complete detariffing in the *Second Report and Order*—is not an issue with respect to casual calling services, for which carriers do not negotiate individual contracts. Frontier and SBC claim, moreover, that contrary to the Commission's conclusions in the *Second Report and Order*, the ''filed-rate'' doctrine is actually beneficial to consumers because the ability to tariff a service ''promotes certainty'' in the carrier-customer relationship. Frontier contends that this certainty is particularly beneficial in situations such as casual calling, where the carrier provides the service prior to establishing an enforceable contractual relationship with the customer.

25. Finally, Western Union urges the Commission to allow nondominant interexchange carriers to file tariffs for consumer messaging services (*e.g.*, telegram services). Western Union advances essentially the same arguments in support of this claim that other parties make in urging the Commission to adopt permissive detariffing for casual calling services. Western Union asserts that customers often convey to Western Union by telephone the message that they want transmitted by telegram. As a result, Western Union contends that it does not have an opportunity to formalize a written contract with the customer that would bind the customer to its terms and conditions. Western Union states that although the carrier could provide such information orally at the time the customer telephones Western Union to place an order, such a method of conveying the information would confuse customers, and may not create a legally enforceable contract that effectively limits the carrier's liability. Western Union further contends that if carriers are unable to limit their liability effectively, they may be forced to increase their rates or cease offering consumer messaging services altogether, which would not be in the public interest.

iii. Discussion

26. A number of parties urge us to reconsider our decision to adopt complete detariffing for casual calling services in general. Sprint has focused its comments on dial-around 1+ services. After examining additional evidence presented by the parties on reconsideration, we partially grant the petitions and adopt permissive detariffing, on an interim basis, for a subset of casual calling services, specifically, the provision of dial-around 1+ services. For all other types of casual calling services that are the subject of this proceeding, we affirm our determination that complete detariffing is warranted, and, therefore, deny the petitions for reconsideration to this extent.

27. We note at the outset that the problems that nondominant interexchange carriers maintain will arise with respect to ensuring the establishment of a contractual relationship with casual callers in a detariffed environment do not arise with calling cards. Because customers obtain calling cards in advance of using the service, the carrier can formalize a contractual relationship at the time the customer obtains the card, rather than at the time the call is placed. Consumers always have the option of obtaining a carrier's calling card to make calls and carriers may choose to advertise calling cards as a preferable alternative to casual calling in a detariffed environment.

28. With the exception of dial-around 1+ calls, discussed *infra*, we affirm our prior finding that nondominant interexchange carriers have reasonable options other than tariffs by which they can ensure the establishment of a contractual relationship with casual callers that would legally obligate such callers to pay for the services they use and bind them to the carrier's terms and conditions. We recognize that the implied-in-fact contract theory and the provision of credit card information or a billing number, alone, do not guarantee that nondominant interexchange carriers will have an enforceable contract with the casual caller, if the caller does not have knowledge of the carrier's rates, terms, and conditions prior to completion of the call. Interexchange carriers, however, do not dispute that alternatives can be created by which they can establish an enforceable contract with casual callers. One alternative, as discussed by AT&T, is that nondominant interexchange carriers could establish an enforceable contract with casual callers by providing them with the rates, terms, and conditions of the interstate, domestic, interexchange service by operator or recorded announcements prior to completion of the call. The parties acknowledge that an enforceable contract would exist if the rates, terms, and conditions were provided prior to completion of the call. Rather, these carriers argue only that providing such an announcement of rates, terms, and conditions prior to completion of the call would be burdensome to their casual calling customers. Many casual calling services, including collect calling, and calls billed to third-party numbers, however, already require intervention by the interexchange carrier before the call is completed, and nondominant interexchange carriers could provide this announcement at that time. Furthermore, less burdensome alternatives may also be sufficient to ensure the establishment of a contractual relationship. Another alternative discussed by AT&T would be to provide casual callers with the option of obtaining the rates, terms, and conditions prior to completion of the call either through an operator or a recorded announcement. We need not address whether this alternative is sufficient to ensure the establishment of an enforceable contract, because we conclude that providing the rates, terms, and conditions prior to completion of the call would establish an enforceable contract and, as discussed below, is a feasible alternative. Moreover, at a minimum, we agree with Frontier and reaffirm our conclusion in the *Second Report and Order* that if the customer has used the carrier's service with knowledge of the rates, terms, and conditions, nondominant interexchange carriers could seek recovery under an implied-in-fact contract theory. Thus, we conclude that the fact that a casual caller has not signed a written contract does not preclude a finding that a legally enforceable obligation exists between the nondominant interexchange carrier and the casual caller, especially when the customer has knowledge of the carrier's charges.

29. We recognize that complete detariffing of casual calling services may require nondominant interexchange

carriers to modify in significant respects the manner in which these carriers bill and collect charges for their affected services. We further recognize the concerns raised by AT&T and Sprint that the cost of casual calls may increase and that casual callers may experience a delay in call set-up time. Nevertheless, we affirm our prior conclusion that the benefits of complete detariffing of casual calling services except dial-around 1+ services are substantial. These benefits include elimination of the possible invocation of the ''filed-rate'' doctrine, decreased risk of tacit price coordination, and increased rate and service information provided directly to casual callers to ensure that a legal relationship is established between carriers and customers at the time the caller uses the casual calling service. In our view, these benefits outweigh the increased costs and delays in call set-up time that AT&T and Sprint claim will result from complete detariffing. In addition, we reiterate that casual callers always have the option of obtaining and using an interexchange carrier's calling card, thereby avoiding any increased cost or delay.

30. We also recognize AT&T's concern that complete detariffing of casual calling services would impede the use of certain casual calling arrangements for calls originated by computers and fax machines, because the computer or fax machine would not recognize the announcement, thereby interfering with the call, and because an announcement transmitted to a computer or fax machine may be insufficient to establish an enforceable contract. AT&T, however, overstates the problem. Casual calling services such as collect calling and calls billed to third-party numbers presently require intervention by the interexchange carrier before the call is completed. Likewise, use of a third-party credit card often requires interaction with the carrier to provide the credit card information. Thus, the use of a recorded announcement in a detariffed environment will not significantly alter the current requirement of intervention by the interexchange carrier. One casual calling service that does not require intervention with the interexchange carrier prior to completion of the call is dial-around 1+ service. As discussed *infra*, we are permitting carriers to file tariffs for dial-around 1+ service through use of a carrier's CAC. Concededly, there may be situations where callers using third-party credit cards may be able to enter their credit card information electronically by swiping the card prior to beginning a call, and that in the absence of tariffs, these customers may face an additional announcement of rates, terms, and conditions. We nevertheless find that the negative consequences to the limited number of those casual callers who may use third-party credit cards for computer access and fax machines do not warrant reconsideration of our decision to detariff completely casual calling except dial-around 1+ services in light of the benefits of complete detariffing of such casual calling services and the fact that most casual calling services already require intervention by an interexchange carrier. Moreover, casual callers who now use third-party credit cards for computer access and fax machines can avoid the announcement of rates, terms, and conditions by obtaining in advance and using an interexchange carrier's calling card. As discussed above, an interexchange carrier can establish an enforceable contract with customers at the time they obtain the calling card, rather than when the call is placed.

31. We also reject Telco's and SBC's argument that, because carriers do not negotiate individual contracts with casual callers, possible invocation of the ''filed-rate'' doctrine is not a concern for casual callers. Although we agree with Telco and SBC that generally the ''filed-rate'' doctrine is an issue when a tariffed rate, term, or condition differs from a rate, term, or condition in a contract, invocation of the ''filed-rate'' doctrine may also harm casual callers. Customers may use a casual calling service in response to an advertisement or direct solicitation, which may provide rates, terms, and conditions for the interstate, domestic, interexchange casual calling service. If the interexchange carrier modifies these rates, terms, or conditions in the future, the consumer would be bound by the tariffed rates, terms, and conditions, even if the consumer did not receive actual notice of the modification. In the absence of tariffs, consumers will likely receive, or have the option of receiving, current information on the rates, terms, and conditions for the specific service they are about to use, because nondominant interexchange carriers will likely disclose such information to the casual caller in order to ensure the establishment of a contractual relationship.

32. While we continue to require complete detariffing for casual calling services in general, we adopt permissive detariffing for dial-around 1+ services using a nondominant interexchange carrier's access code. We are persuaded that the means of ensuring the establishment of an enforceable contract with customers of other casual calling services cannot be implemented currently for dial-around 1+ services, because, as explained below, the interexchange carrier does not have the ability reasonably to distinguish a caller using dial-around 1+ services from direct dial 1+ services, as required to provide the dial-around 1+ caller with the rates, terms, and conditions prior to completion of the call. We note that this issue is not a concern for dial-around 0+ calls from aggregator locations, because those calls require intervention between the carrier and customer, at which time the carrier can establish a contractual relationship with the customer. We further note that not all dial-around 1+ calls are from casual callers. Presently, some customers may need to dial their presubscribed interexchange carrier's access code to use that carrier's interstate, domestic, interexchange services, rather than the caller's LEC, for interstate, intraLATA calls. After February 8, 1999, however, customers will no longer need to dial their presubscribed interexchange carrier's access code to use that carrier's interstate, domestic, interexchange services because LECs are required to institute dialing parity and allow customers to select a PIC for intraLATA toll calling by then. *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas; Administration of the North American Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, CC Docket Nos. 96–98, 95–185, NSD File No. 96–8, CC Docket No. 92–237, IAD File No. 94–102, Second Report and Order and Memorandum Opinion and Order, 61 FR 47284 (September 6, 1996).

33. Sprint and AT&T have presented evidence that the technology to distinguish dial-around 1+ calls from direct dial 1+ calls placed from telephones presubscribed to an interexchange carrier is not universally offered by all LECs either because some LEC switches are not capable of providing signalling using SS7, which is necessary to provide this feature, or because some LECs have chosen not to offer the technology needed to distinguish dial-around 1+ calls from direct dial 1+ calls. Sprint's and AT&T's unchallenged representations, which were not in the record when we considered casual calling services in the *Second Report and Order*, lead us to

find that adoption of complete detariffing at this time for dial-around 1+ services would not be in the public interest. Such a regime would impose substantial costs and burdens on nondominant interexchange carriers that offer dial-around 1+ services and their customers. The rates, terms, and conditions of services provided to presubscribed direct dial callers often differ from those provided to casual callers using a dial-around 1+ service. Because nondominant interexchange carriers would not always be able to distinguish between these two types of calls, they would not always be able to determine the rates, terms, and conditions for a particular call at the time the call is placed. Moreover, the inability of nondominant interexchange carriers to distinguish between these two types of calls would require these carriers to implement for dial-around 1+ callers and direct dial 1+ callers the recorded announcement of the rates, terms, and conditions or other means adopted by such carriers to ensure a contractual relationship with dial-around 1+ callers. Such a recorded announcement may confuse direct dial 1+ customers. Further, the increased costs and the delay in call set-up time that AT&T and Sprint contend are attendant with ensuring the establishment of a contractual relationship would likely be imposed on both dial-around 1+ calls and direct dial 1+ calls from a presubscribed telephone line. We find that imposing these increased costs and delays in call set-up time on both dial-around 1+ callers and customers using a direct dial 1+ service from a telephone line presubscribed to that carrier—in all likelihood, the majority of calls over that line—would impose an unreasonable burden on consumers using direct dial 1+ services from their PIC. We note that these concerns do not arise with respect to dial-around 0+ calls from aggregator locations, because such calls always require intervention by the interexchange carrier and, therefore, implementation of a recorded announcement or some other means of providing customers with the rates, terms, and conditions of the call would not affect consumers making calls other than dial-around 0+ calls. We reach this conclusion because the volume of direct dial 1+ calls from a PIC is vastly larger than the volume of dial-around 1+ calls, and therefore, the costs and burdens associated with providing an announcement of rates, terms, and conditions for dial-around 1+ callers would be imposed on this much larger group. In contrast, the increased costs and delays in call set-up time for other casual calling services would be imposed only on those customers using that particular casual calling service, and the benefits of completely detariffing those casual calling services outweigh the costs, as discussed above.

34. We recognize that nondominant interexchange carriers, to avoid burdening their presubscribed customers, could decide not to provide an announcement of rates, terms, and conditions prior to completion of dial-around 1+ calls. In this circumstance, as in any circumstance where there is no contract, the carrier, at a minimum, could seek to recover under a theory of quantum meruit (Quantum meruit is an ''equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor.'' Black's Law Dictionary 1243 (6th ed. 1990).) for the value of its services. Because we appreciate the somewhat greater burden of pursuing a collection action when only a quantum meruit theory of recovery is available, however, we find that allowing nondominant interexchange carriers to file tariffs for dial-around 1+ services at this time is in the public interest. We are also concerned that nondominant interexchange carriers, to avoid imposing these costs and delays on their presubscribed customers, may decide not to offer a dial-around 1+ service option. Such a result would limit consumers' choices, and, therefore, would also not be in the public interest.

35. We realize that the unique problems created by dial-around 1+ services as they are presently handled could be eliminated if we were to require LECs to deploy universally switches capable of providing SS7. We are not requiring LECs to take such measures in this Order on Reconsideration. A significant number of LEC switches do not presently have SS7 capability, and we do not have an adequate record in this proceeding to evaluate the costs that such a decision would impose on LECs. We note, however, that LECs have been rapidly deploying switches capable of providing SS7, and therefore, the unique technological concerns about the ability to distinguish between dial-around 1+ calls and direct dial 1+ calls from presubscribed customers will not be an issue in the near future. Once LECs universally deploy switches that are capable of providing SS7, we will reexamine this issue to determine whether we will completely detariff dial-around 1+ services for the same reasons that we determine that complete detariffing of other casual calling services is in the public interest. In the meantime, we conclude that permissive detariffing of dial-around 1+ services offered by nondominant interexchange carriers is in the public interest as an interim measure. In addition, we strongly encourage nondominant interexchange carriers to provide dial-around 1+ services on a detariffed basis as soon as they have the capability to do so. Because we are adopting permissive detariffing for dial-around 1+ services, we need not address concerns raised by Sprint that the ''bad debt ratio'' is higher for dial-around 1+ calls than for calls from presubscribed customers.

36. We recognize that adopting permissive detariffing for dial-around 1+ services may raise concerns about invocation of the ''filed-rate'' doctrine for customers of these services. Due to the unique technological concerns with dial-around 1+ services that prevent the interexchange carrier from reasonably being able to provide the dial-around 1+ caller with the rates, terms, and conditions prior to completion of the call, discussed above, we conclude, on balance, that the costs to consumers of adopting complete detariffing for dial-around 1+ services outweigh the benefits of complete detariffing with respect to this particular type of service.

### C. Initial Period of Service to Presubscribed Customers

i. Background

37. The *Second Report and Order* did not specifically address whether complete detariffing is in the public interest with respect to the provision of interstate, domestic, interexchange service to new customers that select and use an interexchange service before receiving information about the rates, terms, and conditions of that service. None of the comments filed in response to the NPRM raised this issue.

ii. Positions of the Parties

38. AT&T contends that we should permit carriers to file tariffs that are effective for the initial 45 days of service to residential and small business customers, or until a contract with the new customer is consummated, whichever is earlier. AT&T claims that many of the concerns carriers raise with respect to casual calling services in a detariffed environment are also relevant with respect to presubscribed customers during the initial period of service. AT&T states that, absent tariffs, nondominant interexchange carriers

will be required to provide service to new customers prior to the formalization of a contractual relationship during the period: (1) After the customer contacts the LEC to designate an interexchange carrier or initiate a PIC change, but before the nondominant interexchange carrier is able to ensure the establishment of an enforceable contractual relationship; and (2) when the customer contacts the interexchange carrier or its marketing agents directly, but before the contract can be prepared and mailed to the customer. AT&T contends that in both situations, tariffs are the only means by which the interexchange carrier can enforce its rates, terms, and conditions and limit its liability before a contract is finalized, without resort to costly, repetitive litigation. AT&T concludes that permitting nondominant interexchange carriers to file tariffs before they have an opportunity to finalize a written contract with a new customer will not adversely affect consumers because market forces will ensure that the filed rates, terms, and conditions will be just, reasonable, and nondiscriminatory, and the Commission's complaint process is available as an additional safeguard. Several commenters support AT&T's request.

iii. Discussion

39. We grant, in part, AT&T's petition for reconsideration urging us to adopt permissive detariffing for the initial 45 days of nondominant interexchange carriers' provision of interstate, domestic, interexchange mass market services to new residential and business customers, or until a written contract is consummated, whichever is earlier. We find, based on the evidence presented by the parties, that permitting interexchange carriers to file tariffs to cover the provision of service during this period is in the public interest in the limited circumstance when a new customer contacts the LEC to select an interexchange carrier or to initiate a PIC change. We expect each LEC to process service requests promptly. Interexchange carriers are reminded that during the effective period of their tariffs, they must make their services generally available to all similarly-situated customers, pursuant to section 202(a). During the effective period of a tariff, interexchange carriers are required, pursuant to section 201(a), to make all efforts to provide service quickly, even under protest. *See In the Matter of Hawaiian Telephone Company,* 78 F.C.C. 2d 1062, 1065 (1980). Carriers are also bound by section 201 when providing service pursuant to individually-negotiated contracts. We conclude, however, that the interexchange carriers have not demonstrated that this exception to our detariffing policy should be extended to the initial period of service to a new customer when the customer directly contacts the interexchange carrier or its marketing agents.

40. We find persuasive AT&T's argument that when a residential or small business customer contacts the LEC in order to presubscribe to an interexchange carrier or initiate a PIC change, (We note that residential and small business customers that contact the LEC to presubscribe to an interexchange carrier or initiate a PIC change are generally those customers that utilize mass market services.) the selected interexchange carrier, because it does not have direct contact with the customer, may be unable immediately to ensure that a legal relationship is established with that customer. AT&T presented evidence establishing that: (1) It takes some LECs up to 60 days to notify AT&T of the PIC designation; (The 45-day period during which we are allowing permissive detariffing was requested by the parties. Although AT&T asserts that it takes LECs up to 60 days to notify it of a PIC change, AT&T's petition for reconsideration requests only that we adopt permissive detariffing for at most 45 days to enable it to formalize a contract. *See* AT&T Petition at 9, 11–12 & n.12. Other parties supported AT&T's request. *See supra* note . AT&T subsequently clarified that allowing interexchange carriers to file tariffs that are applicable for a maximum of 45 days after the customer begins taking service would provide the interexchange carrier a sufficient amount of time to establish a contractual relationship with the customer in almost all cases. Letter from E. E. Estey, Government Affairs Vice President, AT&T, to William F. Caton, Acting Secretary, Federal Communications Commission, July 16, 1997.) (2) AT&T, because of the enormous churn rate in the industry, processes in excess of 30 million PIC changes or requests annually (an average of more than 600,000 requests per week); and (3) an additional two weeks may elapse after AT&T receives notice that it has been designated as a customer's PIC before contract information is mailed to that customer. Thus, during some initial period after interexchange service is established, carriers may be providing interstate, domestic, interexchange service to new customers without adequate assurance that the carriers' rates, terms, and conditions will be legally enforceable, and as a result, may be required to seek recovery of unremitted charges under alternative equitable theories, as discussed above.

41. We have considered various means by which LECs could convey to new customers of a nondominant interexchange carrier the information necessary to ensure the establishment of an enforceable contract during the initial period after the customer contacts the LEC and before the nondominant interexchange carrier can formalize the contractual relationship. We conclude, however, that none of these means adequately ensures an enforceable contractual relationship between the nondominant interexchange carrier and the customer during this initial period. Nondominant interexchange carriers conceivably could contract with LECs to act as agents of the interexchange carrier to establish a contractual relationship with the prospective customer by orally providing the rates, terms, and conditions of the interexchange service. We are reluctant, however, to adopt a policy that may have the effect of mandating such agency arrangements, especially since the LEC may have an affiliate that offers competing interstate interexchange services. Alternatively, if prospective customers are required to contact nondominant interexchange carriers directly prior to the commencement of service in order to establish the necessary contractual relationship, such a requirement would preclude residential and business customers from changing or selecting a PIC by contacting the LECs as they do today. That, in turn, could diminish competition among interexchange carriers by making it more difficult for customers to switch interexchange carriers. Finally, the nondominant interexchange carrier may decide to delay provisioning of the service until a contractual relationship is formalized, which also may discourage residential and business customers from making PIC changes, thereby deterring competition in the interexchange market. We, therefore, conclude that the benefits of allowing nondominant interexchange carriers to file tariffs, at their discretion, for the limited period before the customer executes a written contract outweigh any potential benefits resulting from complete detariffing in this particular situation. Consistent with the deregulatory framework of the 1996 Act, we are allowing nondominant interexchange carriers to file tariffs under the circumstances described herein, as opposed to requiring tariffs, to allow nondominant interexchange

carriers and LECs to agree upon alternatives to tariffs for the purpose of adequately ensuring a contractual relationship between the nondominant interexchange carrier and the customer before the customer formally executes the written contract.

42. We reject AT&T's arguments that we should also allow nondominant interexchange carriers to provide an initial period of service under tariff when a customer contacts the interexchange carrier or its marketing agent directly. AT&T claims that even when the customer contacts the carrier or its marketing agents directly to begin interexchange service or initiate a PIC change, it is unable to consummate a written contract prior to the commencement of service, given the large number of requests it receives and the period of time it takes to process customers' requests. When a customer contacts the interexchange carrier or its marketing agent directly, however, there is an opportunity for the interexchange carrier to establish, at a minimum, an oral contract by relating to the customer the rates, terms, and conditions that will be in effect from the commencement of service until such time as the customer formalizes a written contract with the interexchange carrier. This situation is distinguishable from both the situation in which the prospective customer contacts the LEC to select an interexchange carrier or to initiate a PIC change, and when a customer places a casual call using a carrier's CAC. The interexchange carrier does not have an opportunity in either of those cases to interact with the customer. In contrast, a customer who contacts the nondominant interexchange carrier directly is in essentially the same position as customers of other businesses in unregulated, competitive markets, *i.e.*, they have an opportunity to interact with the service provider before the service is initiated. We are not persuaded, therefore, that we should reconsider our decision to require complete detariffing when a customer contacts the interexchange carrier or its marketing agent directly to begin interexchange service or to initiate a PIC change. We reaffirm our finding that complete detariffing when a customer contacts the interexchange carrier or its marketing agent directly to begin interexchange service or to initiate a PIC change is in the public interest.

43. Moreover, we find that permitting nondominant interexchange carriers to file tariffs effective for the initial 45 days of service or until there is a written contract between the carrier and the customer, whichever is earlier, in those limited instances where prospective customers contact the LEC to select an interexchange carrier or to initiate a PIC change, is not inconsistent with a primary reason we adopted complete detariffing in the *Second Report and Order, i.e.*, eliminating the ability of carriers to invoke the ''filed-rate'' doctrine. We believe that the ability of carriers to invoke the ''filed-rate'' doctrine does not create significant problems when a customer contacts the LEC to select an interexchange carrier or to initiate a PIC change because the proposed tariff is in place only for a limited time, *i.e.*, the initial 45 days of service or until a written contract between the carrier and the customer is consummated, whichever is earlier. The limited term of the tariff would prevent carriers from unilaterally changing the terms of negotiated agreements or unilaterally limiting their liability for damages after the initial period of service. Upon expiration of the tariff, the legal relationship between carriers and customers will much more closely resemble the legal relationship between service providers and customers in an unregulated environment, a goal of detariffing delineated in the *Second Report and Order.*

44. We recognize that permitting nondominant interexchange carriers to file tariffs for service to new customers that contact the LEC raises the risk that carriers could use these tariffs to send price signals for their mass market services. We believe, however, that we cannot address the unique problems raised by the commenters about establishing a contractual relationship with these new customers in a detariffed environment without allowing nondominant interexchange carriers to file tariffs for a short period needed to formalize the contract. We note that should we become aware of evidence indicating that nondominant interexchange carriers are using these tariffs to send price signals for their mass market services, we can reexamine our decision to adopt permissive detariffing for LEC-implemented new customer services.

### *D. Tariff Filing Requirements for Bundled Domestic and International Service Offerings*

#### i. Background

45. In the NPRM in this rulemaking docket, the Commission sought comment on whether it should forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of service offerings that include both interstate, domestic, interexchange services and international services. The Commission noted that it was reserving for a separate proceeding the issue of whether it should consider generally forbearing from requiring tariffs for international services provided by nondominant carriers.

46. We determined in the *Second Report and Order* that there was insufficient record evidence to find that each of the statutory criteria necessary to forbear from requiring nondominant interexchange carriers to file tariffs for the international portions of bundled domestic and international service offerings had been satisfied. We concluded that we should address detariffing of the international portions of bundled domestic and international service offerings in a separate proceeding in which we could examine the state of competition in the international market. We therefore required nondominant interexchange carriers with bundled domestic and international services to bifurcate their bundled domestic and international service offerings and file a tariff that includes only the international portions of their service offerings.

47. We also adopted a nine-month transition period in the *Second Report and Order* to allow nondominant interexchange carriers time to adjust to detariffing. We determined that the Commission would not accept new tariffs for interstate, domestic, interexchange services, or revisions to existing tariffs, for long-term service arrangements during the nine-month transition.

#### ii. Positions of the Parties

48. API and SDN Users request that the Commission detariff the international portions of bundled domestic and international services offered by nondominant interexchange carriers. Ad Hoc Users Committee and the Television Networks support API's and SDN Users' petitions for reconsideration. AT&T and CompTel argue that the international services portion of bundled service offerings should be treated on the same basis as the interstate, domestic, interexchange services portion, without specifying whether both portions should be tariffed or detariffed. SDN Users, AT&T, Ad Hoc Users Committee, and CompTel contend that requiring tariffs only for the international portions of bundled domestic and international service offerings confuses customers and complicates negotiations. API further argues that the statutory forbearance criteria are satisfied with respect to the international portion of bundled international and domestic services, because the policy considerations that

support the Commission's decision to detariff the interstate, domestic, interexchange market are equally relevant to the international portion of bundled international and domestic offerings. In particular, API states that the public interest objectives of eliminating the possible invocation of the ''filed-rate'' doctrine and establishing market conditions that more closely resemble an unregulated environment are also served by detariffing the international portions of bundled international and domestic offerings. API further argues that there is no evidence in the record that would support a need to retain tariffs for the international portions of bundled offerings.

49. Sprint opposes the request to allow domestic nondominant carriers to detariff the international portions of bundled domestic and international services offered by nondominant interexchange carriers. Sprint argues that requiring carriers to detariff such international services will confuse customers, because some carriers are dominant in certain international markets and nondominant in others. Sprint therefore urges the Commission to maintain tariff filing requirements for all international services until the Commission is able to examine the unique issues involved in applying its detariffing policies to international services.

50. AT&T and CompTel further request that the Commission allow permissive detariffing for mixed international and domestic services offered by nondominant interexchange carriers during the nine-month transition to allow carriers and customers to adjust to the new policy. Ad Hoc Users Committee and API oppose this request on the ground that such a policy would allow carriers to alter or abrogate long-term arrangements by invoking the ''filed-rate'' doctrine. API disputes AT&T's contention that customers are ''significantly confused'' by the requirement that nondominant interexchange carriers bifurcate mixed international and domestic service offerings and states that customers have worked through issues with carriers that are far more daunting and potentially confusing.

iii. Discussion

51. In order to determine whether the statutory criteria are satisfied for us to forbear from requiring tariffs for the international portion of bundled domestic and international service offerings, we need to examine the state of competition for these international services. We find nothing in the record on reconsideration that enables us to make findings on the state of competition for such services. API claims only that detariffing the international portion of bundled domestic and international service offerings would lead to the same public interest benefits as detariffing interstate, domestic, interexchange services. Other parties argue that requiring tariffs only for the international portions of bundled domestic and international service offerings confuses customers and complicates negotiations. The parties, however, have not provided new evidence in the record that would enable us to determine that the statutory forbearance criteria are met for detariffing the international portion of bundled domestic and international service offerings. The state of competition in the international market may not be the same as in the domestic market, and, we do not have sufficient evidence in this proceeding to make such a determination. We therefore affirm our conclusion that the determination of whether to detariff the international portions of bundled domestic and international service offerings should be addressed as part of a separate proceeding in which the Commission can further examine the state of competition in the international market.

52. We need not address at this time AT&T's request that we adopt permissive detariffing for bundled international and domestic service offerings during the nine-month transition. The United States Court of Appeals for the D.C. Circuit has stayed the *Second Report and Order*, pending judicial review. Nondominant interexchange carriers, therefore, are currently required to file tariffs for all of their interstate, domestic, interexchange services, including those that are bundled with international services. We delegate authority to the Common Carrier Bureau to determine the appropriate transition period and address other transition issues when the detariffing rules become effective.

*E. Local Access Portion of Interstate, Domestic, Interexchange Services*

i. Positions of the Parties

53. Ad Hoc Users Committee requests that the Commission clarify that the *Second Report and Order* detariffed the exchange access components of the interstate, domestic, interexchange services offered by nondominant interexchange carriers, and not only the interoffice component of such services. It argues that a requirement that nondominant interexchange carriers separate their integrated end-to-end service offerings into interexchange and exchange access services would radically depart from the Commission's historical approach to regulation of the interstate, domestic, interexchange marketplace and would create a ''practical nightmare'' for nondominant interexchange carriers to implement. API and Sprint support Ad Hoc Users Committee's request for clarification.

54. Bell Atlantic contends that Ad Hoc's request, which deals with the regulation of exchange access services and not the regulation of interexchange services, is beyond the scope of this proceeding. Moreover, Bell Atlantic argues that the Commission should not detariff the exchange access services of nondominant providers without detariffing such services for all providers.

ii. Discussion

55. We agree with Ad Hoc Users Committee that we detariffed integrated end-to-end interstate, domestic, interexchange services in the *Second Report and Order*, including both the interexchange portion and the interstate exchange access components of such services when offered on an integrated basis. We note that our conclusion that the forbearance criteria are satisfied applies only to interstate exchange access that is offered to customers as part of an integrated, end-to-end interstate, domestic, interexchange service that the customer is purchasing. We are not detariffing in this proceeding the sale of interstate exchange access that is offered on a stand-alone basis. The Commission, in another proceeding, recently granted, in part, two petitions seeking forbearance from tariff filing requirements for competitive access providers (CAPs) and non-dominant providers of interestate exchange access services. In that proceeding, the Commission adopted permissive detariffing for non-ILEC providers of interstate exchange access services, and proposed the adoption of complete detariffing for all non-ILEC providers of these services. *See In the Matters of Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Time Warner Communications Petition for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers,* Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 97–146, 62 FR 38244 (July 17, 1997); *see also Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User*

*Common Line Charges,* CC Docket Nos. 96–262, 94–1, 91–213, 95–72, First Report and Order, 62 FR 31868 (June 11, 1997) (*Access Charge Reform Order*).

56. Nondominant interexchange carriers purchase or self provide interstate exchange access as an input to providing integrated, end-to-end interstate, domestic, interexchange service. Thus, access is merely a component of a service offered to end users. We have found that market forces generally will ensure that nondominant interexchange carriers do not charge rates, or impose terms and conditions, for their interstate, domestic, interexchange services that violate sections 201 and 202 of the Communications Act. Because market forces will generally constrain nondominant interexchange carriers' charges for interstate, domestic, interexchange services, there is no need to require the nondominant interexchange carrier to break out and tariff a separate charge for interstate exchange access.

*F. Effect of Detariffing on AT&T/ Alascom's Common Carrier Services*

i. Background

57. AT&T/Alascom offers certain ''common carrier'' services that the Commission has defined as ''all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier.'' In the *AT&T Reclassification* proceeding, AT&T made certain commitments, including, *inter alia,* that it ''will comply with all of the obligations and conditions contained in the Commission orders associated with AT&T's purchase of Alascom, Inc., including the *Alascom Authorization Order,* the *Market Structure Order* (59 FR 27496 (May 27, 1994)), and the *Final Recommended Decision* (58 FR 63345 (December 1, 1993)).'' In the *Second Report and Order,* we stated that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services would not affect AT&T's commitment to comply with the Commission's orders associated with AT&T's purchase of Alascom, and that AT&T would continue to be bound by this commitment.

ii. Discussion

58. We have been asked to clarify in this proceeding that the *Second Report and Order* did not detariff AT&T/ Alascom's common carrier services. A similar issue has been raised in the *AT&T Reclassification Order.* We believe this issue is better addressed in that proceeding in light of AT&T's commitment in that proceeding to comply with the Commission's orders associated with AT&T's purchase of Alascom. We therefore incorporate the record filed in this proceeding on the issue of detariffing AT&T/Alascom's common carriers services to the *AT&T Reclassification* proceeding.

## III. Information Disclosure Issues

*A. Background*

59. The Commission tentatively concluded in the NPRM that it would require nondominant providers of interstate, domestic, interexchange telecommunications services to file certifications that they are in compliance with the geographic rate averaging and rate integration requirements of section 254(g) of the Communications Act to ensure compliance with those requirements. The Commission also tentatively concluded in the NPRM that, if it were to adopt a complete detariffing policy, nondominant interexchange carriers would be required to maintain at their premises price and service information regarding all of their interstate, domestic, interexchange service offerings, which they could submit to the Commission upon request.

60. In the *Second Report and Order,* we adopted the tentative conclusion in the NPRM and required nondominant interexchange carriers to file an annual certification stating that they are in compliance with the statutory rate averaging and rate integration requirements. We further adopted the tentative conclusion in the NPRM and ordered nondominant interexchange carriers to maintain supporting documentation on the rates, terms, and conditions of their interstate, domestic, interexchange services that they could submit to the Commission within ten business days upon request. In addition, in the *Second Report and Order,* we required nondominant interexchange carriers to make information concerning current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to the public in at least one location during regular business hours, although we expressly stated that we did not intend to require nondominant interexchange carriers to disclose more information than is currently provided in tariffs.

*B. Positions of the Parties*

61. Several parties filed petitions asking the Commission to reconsider or clarify various aspects of the public disclosure requirement in the *Second Report and Order.* Ad Hoc Users Committee requests that the Commission eliminate the public disclosure requirement with respect to information on individually-negotiated service arrangements. It argues that a public disclosure requirement makes it easier for interexchange carriers to ascertain their competitors' price and service information, and, therefore, the requirement is inconsistent with the Commission's interest in deterring price coordination. Ad Hoc Users Committee further argues that, because the Commission decided to forbear from applying section 254(g) to contract tariffs and similar customer-specific agreements, disclosure of the rates and terms of individually-negotiated service arrangements cannot be justified on the basis of enforcing section 254(g). Rather than requiring public disclosure, Ad Hoc Users Committee contends that the Commission could meet the objectives supporting a public disclosure requirement in the *Second Report and Order* through: (1) The workings of the competitive market; (2) the Commission's complaint process; and (3) disclosure of rate and term information to Commission and state regulatory staff, to Congress in connection with agency oversight, and to complainants in discovery proceedings before the Commission or courts.

62. API, Bell Atlantic, and Sprint support Ad Hoc Users Committee's petition, arguing that a public disclosure requirement for customer-specific arrangements will inhibit competition and that businesses in other competitive markets are not required to disclose the terms of customer-specific deals. Bell Atlantic further argues that, if the Commission eliminates the public disclosure requirement, it should also not require dominant interexchange carriers to disclose their prices to the public through tariffs. Bell Atlantic maintains that requiring dominant interexchange carriers to file tariffs or otherwise disclose their prices would be anticompetitive, because nondominant interexchange carriers would set their prices based on the dominant carrier's disclosed prices.

63. TRA argues that the public disclosure requirement is necessary to address, at least in part, its concerns that carriers will discriminate against resellers in the absence of tariffs. Several other parties request that the Commission strengthen the information disclosure requirements in the *Second Report and Order,* which they deem insufficient. Specifically, Rural

Telephone Coalition (RTC) asks the Commission to require carriers to make information more widely available to consumers to ensure that they have easy access to the information necessary to determine whether nondominant interexchange carriers are complying with the rate integration and rate averaging requirements of section 254(g). RTC argues that the *Second Report and Order's* requirement that nondominant interexchange carriers make information available in only one location will prevent customers, especially those in rural areas, from obtaining the information. Instead, RTC urges the Commission to require carriers to make the information available on-line and at one public place in each state in which the carrier operates. RTC contends that these requirements would not be unduly burdensome on carriers. Alaska and Hawaii support RTC's petition.

64. Telecommunications Management Information Systems Coalition (TMISC) requests that we clarify the disclosure rules by specifying the type and amount of information that must be made publicly available, as well as the time limit within which nondominant interexchange carriers must make the information publicly available. TMISC argues that, without more specific information requirements, the Commission and other interested parties may not be able effectively to enforce the geographic rate averaging and rate integration requirements of section 254(g). TMISC further points out that a significant number of consumer organizations, public interest organizations, and state governments filed comments in this proceeding, arguing that effective public disclosure requirements are not only necessary to enforce section 254(g), but also to enable consumers to make fully informed service decisions. Hawaii argues that the Commission should require nondominant interexchange carriers to disclose the same amount of information that is currently provided in tariffs and also agrees with TMISC that the current information disclosure provisions are inadequate.

65. AT&T responds to RTC and TMISC by arguing that complete detariffing will impose substantial burdens on nondominant interexchange carriers, particularly the costs associated with establishing and maintaining a legal relationship with their customers. AT&T contends that there is no reason to add to these costs by imposing more burdensome information disclosure requirements.

*C. Discussion*

66. The basis for our decision in the *Second Report and Order* to adopt a public disclosure requirement for all interstate, domestic, interexchange services offered by nondominant interexchange carriers was to provide the public with the information necessary to determine whether a carrier was adhering to the rate integration and rate averaging requirements of section 254(g). We recognized that, in competitive markets, carriers would not necessarily maintain geographically averaged and integrated rates for interstate, domestic, interexchange services as required by section 254(g). We also determined that a public disclosure requirement would promote the public interest by making it easier for consumers, including resellers, to compare service offerings and to bring complaints. We noted, however, that nondominant interexchange carriers will generally provide such information to consumers to improve or maintain their competitive position in the market.

67. We sought to tailor this public disclosure requirement to meet our objective of ensuring that nondominant interexchange carriers comply with section 254(g) in their provision of interstate, domestic, interexchange services, while minimizing any potential adverse effects on our general policy of allowing market forces, rather than regulation, to discipline the practices of these carriers. Although a public disclosure requirement does not affect certain benefits of complete detariffing, such as elimination of possible invocation of the ''filed-rate'' doctrine, it may detract from our objective of reducing regulatory burdens and deterring tacit price coordination. Thus, we minimized the burdens on nondominant interexchange carriers of complying with this requirement by, for example, only requiring nondominant interexchange carriers to make information available in one location and not specifying a format for the disclosure.

68. Upon further examination, we agree with Ad Hoc Users Committee that we can more narrowly tailor our information disclosure requirement. We therefore grant Ad Hoc Users Committee's petition and eliminate the public disclosure requirement for individually-negotiated service arrangements. Individually-negotiated service arrangements, as opposed to mass market services, are customer-specific arrangements, such as contract tariffs, AT&T's Tariff 12 options, MCI's special customer arrangements, and Sprint's custom network service arrangements. We find that the disclosure of the rates, terms, and conditions of individually-negotiated service arrangements cannot be justified on the basis of the need to enforce the rate averaging requirements of section 254(g). This is because the Commission decided to ''forbear from applying section 254(g) to such arrangements, consistent with the intent of Congress, to the extent necessary.'' The Commission continues to require carriers to ensure that individually-negotiated service offerings are available to all similarly-situated customers, regardless of their geographic location. The Commission did not forbear from applying the rate integration requirements to individually-negotiated service arrangements. There are several means to ensure that nondominant interexchange carriers make individually-negotiated service arrangements available to all similarly-situated customers without a public disclosure requirement. Market forces generally will ensure that nondominant interexchange carriers that lack market power do not charge rates, or impose terms and conditions, for interstate, domestic, interexchange services that are unjustly or unreasonably discriminatory. Specifically, if a nondominant interexchange carrier could profit from selling an interstate, domestic, interexchange service at one price to one customer and attempted to sell the same service at an unjustly or unreasonably discriminatory price to a similarly-situated customer, that customer would purchase services from other facilities-based nondominant interexchange carriers that could profit from selling the same services to that customer at the lower market price. Moreover, we can remedy any carrier conduct that violates the requirement that carriers make individually-negotiated service arrangements available to all similarly-situated customers through the section 208 complaint process. A customer can file a section 208 complaint and allege that a carrier has unreasonably discriminated against it in the provision of either contract or mass market services. The customer complainant, as always, under section 208, bears the initial burden of establishing that: (1) The complainant sought substantially the same service arrangement under the same terms and conditions that were made available to another customer; and (2) the carrier refused to make that service available to the complainant on terms similar to those of another customer's service arrangement. If a complainant establishes this, the burden

shifts to the carrier which must demonstrate why the discrimination is reasonable. In addition, we will be able to investigate carriers' compliance with our rules through the requirement adopted in the *Second Report and Order* that interexchange carriers maintain price and service information on all of their interstate, domestic, interexchange services and make this information available to the Commission upon request. Thus, eliminating public disclosure for individually-negotiated service arrangements will not hinder enforcement of the requirement that carriers make such services available to all similarly-situated customers, and will also decrease the regulatory burden on nondominant interexchange carriers and deter tacit price coordination.

69. Although Ad Hoc Users Committee requests that the Commission eliminate the public disclosure requirement only for individually-negotiated service arrangements, the arguments it raises about the effect of public disclosure on tacit price coordination and the need to tailor more narrowly the information requirements apply to mass market services as well. Although no party specifically requested that the Commission eliminate the public disclosure requirement for mass market services, the Commission, in light of pending petitions for reconsideration, retains jurisdiction to reconsider its rules on its own motion. *See Central Florida Enters., Inc.* v. *FCC*, 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed*, 441 U.S. 957 (1979). We therefore conclude on reconsideration that we should also eliminate the public disclosure requirement for mass market interstate, domestic, interexchange services offered by nondominant interexchange carriers. Mass market interstate, domestic, interexchange services are those services that are not individually-negotiated service arrangements, and, therefore, we are eliminating the public disclosure requirement for all interstate, domestic, interexchange services offered by nondominant interexchange carriers. Bell Atlantic's argument that we should also not require dominant interexchange carriers to disclose their rates, terms, and conditions is now largely moot in light of our determination that LECs providing interstate, domestic, interexchange services will generally be classified as nondominant in their provision of such services, pursuant to *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96–149, 96–61, Second Report and Order and Third Report and Order, (62 FR 35974 (July 3, 1997)). Because this proceeding concerns detariffing only nondominant interexchange carriers' interstate, domestic, interexchange services and the record on dominant interexchange carrier regulation is extremely limited, we will address the issue of the regulatory treatment of dominant interexchange carriers if and when we determine that an interexchange carrier should be classified as dominant in its provision of interstate, domestic, interexchange services. We emphasize, however, that this decision does not suggest any diminution in our commitment to enforce the geographic rate averaging and rate integration requirements. To that end, we require nondominant interexchange carriers to file annually certifications stating that they are in compliance with their obligations under section 254(g) and to maintain price and service information on all of their interstate, domestic, interexchange services that they must make available to the Commission and to state regulatory commissions upon request. In addition, we will further our goal of deterring tacit price coordination, because a nondominant interexchange carrier's rate, terms, and conditions for interstate, domestic, interexchange services will not be collected and available in one location, although we recognize that nondominant interexchange carriers may still be able to obtain information about their competitors' rates and service offerings in the absence of a public disclosure requirement.

70. We believe that our decision to eliminate the public disclosure requirement for mass market services will not deprive residential and other low volume customers of information about nondominant interexchange carriers' interstate, domestic, interexchange service offerings that they need to ensure that they have been correctly billed and to bring to the Commission's attention possible violations of the Communications Act, particularly section 254(g). To the contrary, we find nothing in the record of this reconsideration proceeding that would cause us to modify our conclusion in the *Second Report and Order* that consumers will have access to information concerning the rates, terms, and conditions for interstate, domestic, interexchange services offered by nondominant interexchange carriers to consumers through, *inter alia*, the billing process, information provided by nondominant interexchange carriers to establish a contractual relationship with their customers, notifications required by service contracts or state consumer protection laws, and advertisements and marketing materials. We note that the majority of consumer complaints about the lawfulness of carriers' rates, terms, or conditions for interstate, domestic, interexchange services are based on information obtained through the billing process. Moreover, as set forth in the *Second Report and Order*, we find that it is highly unlikely that interexchange carriers that lack market power could successfully charge rates, or impose terms and conditions that violate sections 201 and 202 of the Communications Act. Consumers will also have the information they need to select the service best suited to their calling patterns through the mechanisms discussed above and the workings of the competitive market. Because consumers will have access to rate and service information about nondominant interexchange carriers' interstate, domestic, interexchange services in a detariffed environment without a public disclosure requirement, we conclude that the public disclosure requirement in the *Second Report and Order*, let alone an expanded public disclosure requirement as RTC and TMISC request, is unnecessary to protect consumers.

71. We recognize that elimination of the public disclosure requirement will make the collection of information more difficult for businesses, including consumer groups, that analyze and compare the rates and services of interexchange carriers and offer their analysis to the public for a fee. These businesses, however, will have access to the information that nondominant interexchange carriers provide to the public in order to market their services and improve their competitive position in the market. On balance, we conclude that the benefits of eliminating the public disclosure requirement for consumers, *e.g.*, decreased risk of tacit price coordination and increased competition in the interstate, domestic, interexchange market, outweigh any potential adverse effects on these businesses. Moreover, as stated above, consumers will not be deprived of the information they need and will receive additional information directly from nondominant interexchange carriers that will provide rate and service information to consumers in order to ensure the establishment of a contractual relationship with them in a detariffed environment. Although we find on the basis of the record in this

proceeding that a public disclosure requirement is not necessary to ensure that interexchange carriers comply with their obligation under section 254(g), we are prepared to revisit this issue in the event that evidence shows that the safeguards we have implemented are inadequate. One tool at our disposal is to conduct audits of interexchange carrier compliance with the rate averaging obligations of section 254(g).

72. We also recognize the concerns of resellers, as expressed by TRA, that, without rate and service information through either tariffs or a public disclosure requirement, resellers will not have adequate information to prevent nondominant interexchange carriers from discriminating against resellers, which are not only customers, but also competitors of the carriers. We conclude, however, that the resellers' concern that the resale market will not survive in a detariffed environment without a public disclosure requirement is overstated. As noted in the *Second Report and Order*, our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services does not affect such carriers' obligations under sections 201 and 202. Thus, as discussed below, our long-standing policies barring prohibitions on resale and restrictive eligibility requirements will continue in full force to the same extent as prior to detariffing. Moreover, we agree with Ad Hoc Users Committee that it is unreasonable to assume that in a substantially competitive market, facilities-based carriers will not provide resellers with service options at reasonable rates. As TRA noted, in another proceeding, AT&T has just begun to ''reform its conduct with respect to resellers'' when its market share declined to fifty percent. If a carrier does not provide resellers with service options at reasonable rates, resellers are not only likely to find another facilities-based carrier that will do so, but resellers also have the right to file a section 208 complaint with the Commission. We therefore find that the increased benefits to interexchange carriers and consumers of complete detariffing without a public disclosure requirement, *e.g.*, decreased risk of tacit price coordination and increased competition in the interstate, domestic, interexchange market, and a reduced regulatory burden justify any negative effect upon resellers of eliminating the public disclosure requirement.

73. Finally, we make clear that the annual certification requirement and the requirement that nondominant interexchange carriers maintain price and service information on all of their interstate, domestic, interexchange services that they must submit to the Commission upon request, discussed herein, are the same as those contained in the *Second Report and Order.*

## IV. Miscellaneous Issues

### *A. Nondiscriminatory Access to Interstate, Domestic, Interexchange Services*

#### i. Positions of the Parties

74. TRA asks the Commission to clarify that nondominant interexchange carriers are required to make available, upon request, all interstate, domestic, interexchange services, including contract-based services, on a nondiscriminatory basis, to all qualified entities, including resellers. TRA argues that the Commission has required nondominant interexchange carriers to make such service offerings generally available, and has declared unlawful restrictive eligibility requirements that unreasonably discriminate against similarly-situated customers. TRA notes that the Commission addressed its concerns in the *Second Report and Order*, in part, by requiring nondominant interexchange carriers to make publicly available price and service information on all of their interstate, domestic, interexchange services. TRA contends, however, that the *Second Report and Order* does not expressly declare that the ''general availability'' requirement will continue to apply.

#### ii. Discussion

75. The Commission has long-standing policies of prohibiting restrictions on resale and barring restrictive eligibility requirements for interstate, domestic, interexchange services that have the effect of unreasonably discriminating against similarly-situated customers. The Commission has further concluded that individually-negotiated service arrangements do not violate section 202(a)'s prohibition against ''unjust or unreasonable discrimination,'' if the terms of the service arrangement are made available to similarly-situated customers. In the *Second Report and Order*, we made clear that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services does not affect carriers' obligations under sections 201 and 202. Thus, nondominant interexchange carriers are prohibited from imposing restrictions on resale and restrictive eligibility requirements that unreasonably discriminate against similarly-situated customers to the same extent that they were prohibited from doing so prior to adoption of the *Second Report and Order.* TRA also stated in its petition that the Commission partially addressed its concerns by requiring nondominant interexchange carriers to disclose publicly certain information regarding their interstate, domestic, interexchange services. As stated above, we have eliminated the public disclosure requirement in this Order on Reconsideration. For a discussion of this issue and TRA's concerns, see *supra* paras. 59–73.

### *B. Law Governing the Lawfulness of Rates, Terms, and Conditions for Interstate Services*

#### i. Positions of the Parties

76. AT&T requests that the Commission clarify that federal, and not state, law governs the determination as to whether a nondominant interexchange carrier's rates, terms, and conditions for interstate, domestic, interexchange services are lawful. AT&T contends that parties may interpret the statement in the *Second Report and Order* that, with complete detariffing, ''consumers will also be able to pursue remedies under state consumer protection and contract laws'' as allowing challenges under state law to the lawfulness of rates, terms, and conditions for these interstate services. AT&T argues that any interpretation that authorizes such challenges under state law is foreclosed by numerous judicial decisions recognizing that sections 201 and 202 of the Communications Act preempt state law with respect to the reasonableness of rates, terms, and conditions for interstate telecommunications services. Sprint, and WorldCom support AT&T's petition, arguing that the Communications Act, and not state law, governs rates, terms, and conditions for interstate telecommunications services. U S WEST argues that the Commission should adopt permissive detariffing until it conducts a new proceeding to determine the law that governs the relationship between carriers and customers in a detariffed environment. API opposes U S WEST's request that the Commission conduct a new proceeding to determine the applicability of state and federal law in a detariffed environment.

#### ii. Discussion

77. In the *Second Report and Order*, we stated that our decision to forbear from requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange

services will not affect our enforcement of carriers' obligations under sections 201 and 202 to charge rates, and impose practices, classifications, and regulations that are just and reasonable, and not unjustly or unreasonably discriminatory. We therefore agree with AT&T, Sprint, and WorldCom that the Communications Act continues to govern determinations as to whether rates, terms, and conditions for interstate, domestic, interexchange services are just and reasonable, and are not unjustly or unreasonably discriminatory. While the parties only sought clarification that the Communications Act governs the determination as to the lawfulness of rates, terms, and conditions, we note that the Communications Act does not govern other issues, such as contract formation and breach of contract, that arise in a detariffed environment. As stated in the *Second Report and Order,* consumers may have remedies under state consumer protection and contract laws as to issues regarding the legal relationship between the carrier and customer in a detariffed regime.

78. We reject U S WEST's argument that we should adopt permissive detariffing until there is greater certainty about the law that would govern the relationship between carriers and customers in the absence of tariffs. We adopted a nine-month transition in the *Second Report and Order,* during which nondominant interexchange carriers are permitted to file new tariffs and revise existing tariffs for mass market services. This transition provides for a period of permissive detariffing to allow nondominant interexchange carriers time to adjust to detariffing. We believe that a lengthier period of time is unnecessary to address U S WEST's concern.

*C. Private Contract Clauses Preserving the ''Filed-Rate'' Doctrine*

i. Positions of the Parties

79. Ad Hoc requests that the Commission clarify that the intent of the *Second Report and Order* is not to permit carriers to preserve the ''unfair advantages'' they would enjoy under ''filed-rate'' doctrine, but to eliminate the ability of nondominant interexchange carriers to invoke the ''filed-rate'' doctrine. Ad Hoc contends that some interexchange carriers are attempting to preserve their right to make unilateral changes to contracts by including a contract clause pursuant to which the carrier is permitted to alter the terms of the contract at any time, and for any reason.

ii. Discussion

80. In the *Second Report and Order,* we stated that not permitting nondominant interexchange carriers to file tariffs for the provision of interstate, domestic, interexchange services will achieve the public interest objective of eliminating the ability of nondominant interexchange carriers to invoke the ''filed-rate'' doctrine. We also observed that eliminating the ability of carriers to invoke the ''filed-rate'' doctrine benefits consumers by creating a legal relationship that more closely resembles the legal relationship between service providers and customers in an unregulated environment, and is in the public interest. While we do not support attempts by carriers to preserve their ability to alter unilaterally the terms of a contract, pursuant to a contract clause, we will rely on private negotiations between the parties in the first instance to resolve such issues. The issue of whether a particular contract clause is ''just and reasonable,'' as required by section 201(b) of the Communications Act, is not before us in this proceeding, however, such an issue would be an appropriate matter for a section 208 complaint.

*D. Relationship of Detariffing to Access Charge Reform and Universal Service*

i. Positions of the Parties

81. RTC urges the Commission in this proceeding to ensure adequate universal support for access charges in high-cost areas to minimize the incentive of interexchange carriers to deaverage their rates. RTC contends that, notwithstanding the statutory requirement that interexchange carriers charge ''reasonably comparable'' rural and urban interexchange rates, interexchange carriers have an incentive to deaverage their rates, especially as they face increased competition from BOCs and others. RTC further argues that eliminating tariffs and curtailing public information availability will decrease interexchange carriers' incentive to average interexchange rates. Although RTC recognizes that the Commission is considering universal service support and access charge reform in other dockets, it nevertheless contends that there is an overlap between this proceeding and those other dockets. Thus, RTC urges the Commission in this proceeding to reduce the incentive to deaverage rates by ensuring adequate support mechanisms for high-cost areas.

82. AT&T counters that the *Second Report and Order* does not compel a particular result in the Commission's universal service and access charge reform proceedings. AT&T further argues that any relationship between detariffing and access charge reform or universal service should be considered in those particular dockets.

ii. Discussion

83. We have recently addressed universal service support and access charge reform in separate proceedings. We agree with AT&T that these issues are beyond the scope of this proceeding and better addressed in those particular proceedings in which numerous parties commented specifically on universal service and access charge reform issues. Therefore, we decline to address these issues in this proceeding.

*E. Fees for the Withdrawal of Tariffs*

i. Positions of the Parties

84. TRA requests that the Commission refrain from collecting filing fees from nondominant interexchange carriers that are required to withdraw tariffs pursuant to the *Second Report and Order.* TRA argues that § 1.1113(a)(4) of the Commission's rules supports its argument that it is inequitable to retain filing fees when carriers are compelled to withdraw tariffs as a result of Commission action.

ii. Discussion

85. Pursuant to § 1.1105 of the Commission's rules, tariff filings must be accompanied by a filing fee, which is currently six hundred dollars per tariff filing. After we adopted the *Second Report and Order,* the Common Carrier Bureau received inquiries concerning whether nondominant interexchange carriers must pay the tariff filing fee to withdraw or revise tariffs pursuant to the *Second Report and Order,* and whether nondominant interexchange carriers that pay such fees would be entitled to a refund or return of the fee. On December 19, 1996, the Common Carrier Bureau issued the *Public Notice Concerning Implementation,* in which it responded to these inquiries and addressed the precise issue TRA raises here. The Common Carrier Bureau, consistent with Commission precedent and practice, concluded in the *Public Notice Concerning Implementation* that nondominant interexchange carriers would need to pay tariff filing fees to withdraw or revise existing tariffs pursuant to the *Second Report and Order,* and that such carriers would not be entitled to a return or refund of the fee. We now affirm this conclusion.

86. The purpose of the fee program is to assess and collect fees for regulatory services provided to the public, and the

fees charged are based primarily on the costs to the Commission of providing those services. In the *Fee Program Order* (52 FR 5285 (February 20, 1987)), the Commission concluded that § 1.1113(a)(4) was ''intended to apply in those rare instances where the Commission creates a new regulation or policy, or the Congress and the President approve a new law or treaty, that would make the grant of a *pending* application a legal nullity.'' The Commission specifically concluded that Congress, when it established the regulatory fee program, did not envision an exemption from the payment of fees for additional tariff filings required by changes to the Commission's rules. Based on its analysis in the *Fee Program Order,* the Commission required Commercial Mobile Radio Service providers to pay the tariff filing fee for cancelling tariffs for domestic interstate services pursuant to a Commission order. We are not aware of any distinction that justifies a different determination in this case. We therefore conclude that nondominant interexchange carriers cancelling their tariffs for interstate, domestic, interexchange services, or revising their tariffs for bundled international and domestic service offerings to exclude interstate, domestic, interexchange services, will be required to pay the tariff filing fee and will not be eligible for a return or refund of that fee.

87. To minimize the cost to nondominant interexchange carriers of cancelling or revising tariffs pursuant to the *Second Report and Order,* we reiterate that such carriers may cancel or revise several tariffs under one cover letter with the payment of one filing fee, as stated in the *Public Notice Concerning Implementation.* In addition, organizations that file tariffs on behalf of several carriers may request a waiver of applicable filing rules so that they may cancel the tariffs of several carriers or file revisions to tariffs of several carriers under one cover letter with the payment of one filing fee.

## V. Procedural Issues

### *A. Final Regulatory Flexibility Analysis on Reconsideration*

88. As required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comments on the proposals in the NPRM. In addition, pursuant to section 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Second Report and Order.* That FRFA conformed to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Supplemental Final Regulatory Flexibility Analysis in this initial Order on Reconsideration (Supplemental FRFA) also conforms to the RFA.

#### i. Need for and Objectives of This Order on Reconsideration and the Rules Adopted Herein

89. With the exception of dial-around 1+ services and LEC-implemented new customer services, our decisions and rules in this Order on Reconsideration detariff completely the interstate, domestic, interexchange services of nondominant interexchange carriers. In this Order on Reconsideration, we grant in part and deny in part several of the petitions filed for reconsideration and/or clarification of the *Second Report and Order,* in order to further the same needs and objectives as those discussed in the FRFA in the *Second Report and Order,* including reducing the costs and burdens of providing interstate, domestic, interexchange services, in the absence of tariffs, on nondominant interexchange carriers and customers, some of which are small entities. First, we adopt permissive detariffing for dial-around 1+ services using a nondominant interexchange carrier's access code. Second, we adopt permissive detariffing for the initial 45 days of LEC-implemented interstate, domestic interexchange service to new residential or small business customers, or until a written contract is consummated, whichever is earlier. Third, we eliminate the public disclosure requirement for all interstate, domestic, interexchange service offered by nondominant interexchange carriers. In addition, we require nondominant interexchange carriers to file annual certifications stating that they are in compliance with their obligations under section 254(g) and to maintain price and service information on all of their interstate, domestic, interexchange services that they must make available to the Commission upon request. Finally, with the exception of dial-around 1+ services and LEC-implemented new customer services, we affirm our conclusion that permissive detariffing of all other interstate, domestic, interexchange service of nondominant interexchange carriers is not in the public interest.

#### ii. Analysis of Significant Issues Raised in Response to the FRFA

90. *Summary of the FRFA.* In the FRFA, we recognized that many of the decisions and rules adopted in the *Second Report and Order* may have a significant effect on a substantial number of the small telephone companies identified by the Small Business Administration (SBA). Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, we estimated that fewer than 3,497 telephone service firms are small entity telephone service firms that could be affected. We also discussed the reporting requirements imposed by the *Second Report and Order.*

91. In addition, we discussed the steps we had taken to minimize the impact on small entities, consistent with our stated objectives. We concluded that our actions in the *Second Report and Order* would benefit small entities by facilitating the development of increased competition in the interstate, domestic, interexchange market, thereby benefitting all consumers, some of which are small business entities. We found that the record in that proceeding indicated that detariffing on a permissive basis would not definitively eliminate the possible invocation of the ''filed-rate'' doctrine and would create the risk of price signalling. We concluded that only with complete detariffing could we definitively eliminate these possible anticompetitive practices and protect consumers, some of which are small business entities. We noted that we attempted to keep burdens on nondominant interexchange carriers to a minimum. For example, we did not require nondominant interexchange carriers to make rate and service information available to the public in any particular format, or at any particular location.

#### *a. Impact of Complete Detariffing on Small, Nondominant Interexchange Carriers*

92. *Comments.* Although not in response to the FRFA, TRA claims that the *Second Report and Order* does not adequately address the impact of complete detariffing on small, nondominant interexchange carriers. TRA requests that the Commission permit nondominant interexchange carriers to tariff their domestic, interstate, interexchange service offerings.

93. *Discussion.* As discussed in the Order on Reconsideration, we permit carriers to file tariffs for dial-around 1+ services and LEC-implemented new customer services. We base this decision on the credible evidence offered by parties on reconsideration concerning the costs and burdens to carriers and customers of providing these services in the absence of tariffs. Permitting carriers

to file tariffs in these limited circumstances will ease the burdens on nondominant interexchange carriers and customers, some of which are small entities. We discuss these issues above in the Order on Reconsideration.

iii. Description and Estimates of the Number of Small Entities Affected by This Order on Reconsideration

94. For the purposes of this Order on Reconsideration, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities with fewer than 1,500 employees. We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories that may be affected by our rules, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

95. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not ''independently owned and operated.'' For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this Order on Reconsideration.

96. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order on Reconsideration.

97. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of interexchange carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with Telecommunications Relay Services (TRS). According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 97 small entity interexchange carriers that may be affected by the decisions and rules adopted in this Order on Reconsideration.

98. *Resellers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under the SBA's rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order on Reconsideration.

99. In addition, the rules adopted in this Order on Reconsideration may affect companies that analyze information contained in tariffs. The SBA has not developed a definition of small entities specifically applicable to companies that analyze tariff information. The closest applicable definition under the SBA rules is for Information Retrieval Services (SIC Category 7375). The Census Bureau reports that, at the end of 1992, there were approximately 618 such firms classified as small entities. This number contains a variety of different types of companies, only some of which analyze tariff information. We are unable at this time to estimate with greater precision the number of such companies and those that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 618 such small entity companies that may be affected by the decisions and rules adopted in this Order on Reconsideration.

100. We assume that most, if not all, small businesses purchase interstate, domestic, interexchange telecommunications services. As a result, our rules in this Order on Reconsideration would affect virtually all small business entities. The SBA guidelines to the SBREFA state that about 99.7 percent of all firms are small and have fewer than 500 employees and

less than $25 million in sales or assets. There are approximately 6.3 million establishments in the SBA's database. The SBA database does include nonprofit establishments, but it does not include governmental entities. SBREFA requires us to estimate the number of such entities with populations of less than 50,000 that would be affected by our new rules. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. This number, however, includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that would be affected by the decisions and rules adopted in this Order on Reconsideration.

iv. Summary Analysis of the Projected Reporting, Recordkeeping, and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of This Order on Reconsideration on Small Entities, Including the Significant Alternatives Considered and Rejected

101. *Structure of the Analysis.* In this section of the Supplemental FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Order on Reconsideration. As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected.

102. We provide this summary analysis to provide context for our analysis in this Supplemental FRFA. To the extent that any statement contained in this Supplemental FRFA is perceived as creating ambiguity with respect to our rules or statements made in the *Second Report and Order* or preceding sections of this Order on Reconsideration, the rules and statements set forth in the *Second Report and Order* and in the preceding sections of this Order on Reconsideration shall be controlling.

*a. Permissive Detariffing for Dial-around 1+ Services*

103. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Second Report and Order*, we concluded that the record did not support a finding that complete detariffing would cause nondominant interexchange carriers to cease offering casual calling services. Rather, we found that nondominant interexchange carriers have options other than tariffs by which they can ensure the establishment of a contractual relationship with casual callers that would legally obligate such callers to pay for the telecommunications service they use and bind them to the carriers' terms and conditions. In this Order on Reconsideration, we adopt permissive detariffing, on an interim basis, for a subset of casual calling services, specifically, the provision of dial-around 1+ services. This change in the manner of conducting their business may require nondominant interexchange carriers to use technical, operation, accounting, billing, and legal skills.

104. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* By permitting nondominant interexchange carriers to file tariffs for dial-around 1+ services, we enable these carriers and their customers, some of which are small business entities, to avoid the substantial costs and burdens associated with ensuring the establishment of an enforceable contract in the absence of tariffs. The means of ensuring the establishment of an enforceable contract with customers of other casual calling services cannot be reasonably implemented currently for dial-around 1+ services because the interexchange carriers do not have the ability reasonably to distinguish dial-around 1+ calls from direct dial 1+ calls placed from telephones presubscribed to an interexchange carrier, as required to provide the dial-around 1+ caller with the rates, terms, and conditions prior to completion of the call. The inability of nondominant interexchange carriers to distinguish between dial-around 1+ and direct dial 1+ calls would require these carriers to implement the recorded announcement of the rates, terms, and conditions or other means adopted by such carriers to ensure a contractual relationship with dial-around 1+ callers for both dial-around 1+ callers and direct dial 1+ callers. The increased costs and the delay in call set-up time that are attendant with ensuring the establishment of a contractual relationship with dial-around 1+ callers would impose an unreasonable burden on consumers using direct dial 1+ service from their PIC. We find in this Order on Reconsideration that the technology to distinguish dial-around 1+ calls from direct dial 1+ calls placed from telephones presubscribed to an interexchange carrier is not universally offered by all LECs, either because some LEC switches are not capable of providing signalling using SS7, which is necessary to provide this feature, or because a LEC has chosen not to offer this feature.

105. In this Order on Reconsideration, we reject the option of requiring LECs to deploy universally switches capable of providing SS7. We reject this option, which might impose greater burdens on small LECs, because a significant number of LEC switches do not presently have SS7 capability and we do not have an adequate record in this proceeding to evaluate the costs that such a decision would impose on LECs.

*b. Permissive Detariffing for LEC-Implemented New Customer Services*

106. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Second Report and Order*, we did not specifically address whether complete detariffing is in the public interest with respect to the provision of interstate, domestic, interexchange service to new customers that select and use an interexchange service before receiving information about the rates, terms, and conditions of that service. In this Order on Reconsideration, we permit interexchange carriers to file tariffs to cover the provision of service during the initial 45 days of nondominant interexchange carriers' provision of interstate, domestic, interexchange services to new residential and small business customers, or until a written contract is consummated, whichever is earlier, in the limited circumstance when a new customer contacts the LEC to select an interexchange carrier or to initiate a PIC change. This change in the manner of conducting their business may require nondominant interexchange carriers to use technical, operation, accounting, billing, and legal skills.

107. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Alternatives Considered.* Adoption of permissive detariffing for the initial period of LEC-implemented interstate, domestic, interexchange service to new residential and small business customer enables the nondominant interexchange carriers and their customers, some of which are

small business entities, to avoid the substantial costs and burdens associated with ensuring the establishment of an enforceable contract in the absence of tariffs.

108. In this Order on Reconsideration, we considered several means by which LECs could convey to customers of nondominant interexchange carriers the information necessary to ensure the establishment of an enforceable contract during the initial period after the customer contacts the LEC and before the nondominant interexchange carrier can formalize the contractual relationship. We conclude, however, that none of these means adequately ensures an enforceable contractual relationship between the nondominant interexchange carrier and the customer during this initial period of service. We reject the alternative of requiring nondominant interexchange carriers to contract with LECs to act as agents of the interexchange carrier to establish a contractual relationship with the prospective customer by orally providing the rates, terms, and conditions of the interexchange service. We are reluctant to adopt a policy that may have the effect of mandating such agency arrangements, especially since the LEC may have an affiliate that offers competing interstate interexchange services. In addition, requiring prospective customers to contact nondominant interexchange carriers directly prior to the commencement of service in order to establish the necessary contractual relationship would preclude residential and small business customers from changing or selecting a PIC by contacting the LECs as they do today. Finally, nondominant interexchange carrier could decide to delay provisioning of the service until a contractual relationship is formalized, but such a delay may also discourage residential and small business customers from making PIC changes, thereby deterring competition in the interexchange market.

*c. Information Disclosure Requirements*

109. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Second Report and Order*, we required nondominant interexchange carriers to make information on current rates, terms, and conditions for all of their interstate, domestic, interexchange services available to the public in at least one location during regular business hours. We also required carriers to inform the public that this information is available when responding to consumer inquiries or complaints and to specify the manner in which the consumer may obtain the information. We further required nondominant interexchange carriers to maintain, for a period of two years and six months, the information provided to the public, as well as documents supporting the rates, terms, and conditions for all of their interstate, domestic, interexchange offerings, that they can submit to the Commission upon request. In addition, we required nondominant interexchange carriers to file with the Commission, and update as necessary, the name, address, and telephone number of the individual, or individuals, designated by the carrier to respond to Commission inquiries and requests for documents. We further required nondominant providers of interstate, domestic, interexchange telecommunications services to file annual certifications signed by an officer of the company under oath that the company is in compliance with its statutory geographic rate averaging and rate integration obligations.

110. In this Order on Reconsideration, we eliminate the requirement that nondominant interexchange carriers make publicly available information concerning rates, terms, and conditions for all of their interstate, domestic, interexchange services. To enforce the geographic rate averaging and rate integration requirements applicable to mass market services, we require nondominant interexchange carriers to file annual certifications stating that they are in compliance with their obligations under section 254(g) and to maintain price and service information on all of their interstate, domestic, interexchange services that they must make available to the Commission upon request. Compliance with this obligation may require the use of accounting, billing, and legal skills.

111. *Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered.* We recognize that elimination of the public disclosure requirement will make the collection of information more difficult for businesses, including consumer groups, that analyze and compare the rates and services of interexchange carriers and offer their analysis to the public for a fee. These businesses, however, will have access to the information that nondominant interexchange carriers provide to the public in order to market their services and improve their competitive position in the market. Moreover, we conclude that consumers will not be deprived of the information they need and will receive additional information directly from nondominant interexchange carriers that will provide rate and service information to consumers in order to ensure the establishment of a contractual relationship with them in a detariffed environment.

112. We also recognize the concerns of resellers that, without rate and service information made available through either tariffs or a public disclosure requirement, resellers will not have adequate information to prevent nondominant interexchange carriers from discriminating against resellers, which are not only customers, but also competitors of the carriers. We find, however, that the increased benefits to interexchange carriers and consumers of complete detariffing without a public disclosure requirement, *e.g.*, decreased risk of tacit price coordination and increased competition in the interstate, domestic, interexchange market, and a reduced regulatory burden justify any negative effect upon resellers of eliminating the public disclosure requirement.

**v. Report to Congress**

113. The Commission shall send a copy of this Supplemental FRFA, along with this Order on Reconsideration, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Supplemental FRFA will also be published in the **Federal Register**.

*B. Supplemental Final Paperwork Reduction Analysis*

114. As required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, the NPRM invited the general public and the Office of Management and Budget (OMB) to comment on proposed changes to the Commission's information collection requirements contained in the NPRM. The changes to our information collection requirements proposed in the NPRM included: (1) The elimination of tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange telecommunications services; (2) the requirement that nondominant interexchange carriers maintain at their premises price and service information regarding their interstate, interexchange offerings that they can submit to the Commission upon request; (3) the requirement that providers of interexchange services file certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under section 254(g) of the Communications Act; and (4) the requirement that interexchange carriers advertise the availability of

discount rate plans throughout the entirety of their service areas.

115. On June 12, 1996, OMB approved all of the proposed changes to our information collection requirements in accordance with the Paperwork Reduction Act. In approving the proposed changes, OMB ''strongly recommend(ed) that the (Commission) investigate potential mechanisms to provide consumers, State regulators, and other interested parties with some standardized pricing information,'' which ''could be provided as part of the certification process or could be made available to the public in other ways.''

116. In this Order on Reconsideration, we adopt several changes to our information collection requirements proposed in the NPRM. Specifically, we have decided to: (1) Permit nondominant interexchange carriers to file tariffs for the provision of dial-around 1+services using a nondominant interexchange carrier's carrier access code; (2) permit nondominant interexchange carriers to file tariffs for the initial 45 days of domestic, interstate, interexchange service, or until there is a written contract between the carrier and the customer, whichever is earlier; (3) eliminate the public disclosure requirement. We reaffirm our decision in the *Second Report and Order* to require nondominant interexchange carriers to: (1) File annual certifications with the Commission stating that they are in compliance with their statutory rate integration and geographic rate averaging obligations under section 254(g) of the Communications Act, and (2) maintain price and service information on all their interstate, domestic, interexchange services that they can make available to the Commission upon request. Implementation of these requirements will be subject to approval by OMB as prescribed by the Paperwork Reduction Act.

## VI. Ordering Clauses

117. Accordingly, *it is ordered* that, pursuant to sections 1–4, 10, 201, 202, 203, 204, 205, 215, 218, 220, 226, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 201, 202, 203, 204, 205, 215, 218, 220, 226, and 254, *the Order on Reconsideration* is hereby *adopted*. The requirements adopted in this Order on Reconsideration shall be effective December 4, 1997, or on the date when the requirements adopted in the Second Report and Order in this proceeding become effective, whichever is later. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

118. *It is further ordered* that parts 42 and 61 of the Commission's rules, 47 CFR parts 42 and 61 *are amended* as set forth herein.

119. *It is further ordered* that the Petitions for Reconsideration filed by Ad Hoc Users Committee, AT&T, Frontier, Telco, and TRA are granted in part and denied in part, as described herein. All other Petitions for Reconsideration filed in this proceeding are denied.

120. *It is further ordered* that the Petitions for Clarification filed in this proceeding are granted in part, and denied in part, as described herein.

121. *It is further ordered that whereas the Second Report and Order* in this proceeding was stayed by the United States Court of Appeals for the District of Columbia Circuit, we direct the General Counsel expeditiously to file the necessary papers with the court to request clarification of that stay on the decision herein.

Accordingly, this Order on Reconsideration is stayed pending the court's ruling.

## List of Subjects in 47 CFR Parts 42 and 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

## Rule Changes

Parts 42 and 61 of title 47 of the Code of Federal Regulations are amended as follows:

## PART 42—PRESERVATION OF RECORDS OF COMMUNICATIONS COMMON CARRIERS

1. The authority citation for part 42 continues to read as follows:

**Authority:** Sec. 4(i), 48 Stat. 1066, as amended, 47 U.S.C. 154(i). Interprets or applies secs. 219 and 220, 48 Stat. 1077–78, 47 U.S.C. 219, 220.

### §42.10 [Removed]

2. Section 42.10 is removed.

3. Section 42.11 is amended by revising paragraph (a) and removing paragraph (c).

### § 42.11 Retention of information concerning detariffed interexchange services.

(a) A nondominant interexchange carrier shall maintain, for submission to the Commission upon request, price and service information regarding all of the carrier's detariffed interstate, domestic, interexchange service offerings. The price and service information maintained for purposes of this subparagraph shall include documents supporting the rates, terms, and conditions of the carrier's detariffed interstate, domestic, interexchange offerings. The information maintained pursuant to this subsection shall be maintained in a manner that allows the carrier to produce such records within ten business days.

* * * * *

## PART 61— TARIFFS

4. The authority citation for part 61 continues to read as follows:

**Authority:** Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C.151, 154(i). 154(j), 201–205, and 4–3, unless otherwise noted.

5. Section 61.20 is revised to read as follows:

### § 61.20 Detariffing of interstate, domestic, interexchange services.

(a) Except as otherwise provided in paragraphs (b) and (c), or by Commission order, carriers that are nondominant in the provision of interstate, domestic, interexchange services shall not file tariffs for such services.

(b) Carriers that are nondominant in the provision of interstate, domestic, interexchange services shall be allowed to file tariffs for dial-around 1+services. For the purposes of this paragraph, dial-around 1+calls are those calls made by accessing the interexchange carrier through the use of that carrier's carrier access code. A carrier access code is a five or seven digit access code that enables callers to reach any carrier, presubscribed or otherwise, from any telephone.

(c) Carriers that are nondominant in the provision of interstate, domestic, interexchange services shall be allowed to file tariffs for such service to those customers who contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. These tariffs shall remain in effect until the interexchange carrier and the customer consummate a written contract, but in no event for more than 45 days.

6. Section 61.72 is amended by revising the introductory text of paragraph (a) to read:

### § 61.72 Posting.

(a) Offering carriers must post (i.e., keep accessible to the public) during the carrier's regular business hours, a schedule of rates and regulations for those services for which tariff filings are

required and those services for which carriers exercise the option to file tariffs. This schedule must include all effective and proposed rates and regulations pertaining to the services offered to and from the community or communities served, and must be the same as that on file with the Commission. This posting requirement must be satisfied by the following methods:

* * * * *

[FR Doc. 97–29117 Filed 11–3–97; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 96–250; RM–8952]**

### Radio Broadcasting Services; Parris Island and Hampton, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Simmons Broadcasting Company, substitutes Channel 276C3 for Channel 221A at Parris Island, South Carolina, and modifies Station WGZO(FM)'s license accordingly. To accommodate the upgrade, we also substitute Channel 221A for Channel 276A at Hampton, South Carolina, and modify Station WBHC–FM's license accordingly. *See* 61 FR 66248, December 17, 1996. Channel 276C3 can be allotted to Parris Island in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 276C3 at Parris Island are North Latitude 32–27–00 and West Longitude 80–47–30. Additionally, Channel 221A can be allotted to Hampton in compliance with the Commission's minimum distance separation requirements at Station WBHC–FM's presently licensed site. The coordinates for Channel 221A at Hampton are North Latitude 32–50–39 and West Longitude 81–07–28. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** December 8, 1997.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96–250, adopted October 15, 1997, and released October 24, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

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

### PART 73—[AMENDED]

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

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 221A and adding Channel 276C3 at Parris Island; and by removing Channel 276A and adding Channel 221A at Hampton.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 97–29116 Filed 11–3–97; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AD05**

### Endangered and Threatened Wildlife and Plants; Final Rule to List the Northern Population of the Bog Turtle as Threatened and the Southern Population as Threatened Due to Similarity of Appearance

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines threatened status pursuant to the Endangered Species Act of 1973, as amended (Act) for the northern population of the bog turtle (*Clemmys muhlenbergii*), which ranges from New York and Massachusetts south to Maryland. The Service also determines the southern population of the bog turtle, which occurs in the Appalachian Mountains from southern Virginia to northern Georgia, to be threatened due to similarity of appearance to the northern population, with a special rule.

The bog turtle is threatened by a variety of factors including habitat degradation and fragmentation from agriculture and development, habitat succession due to invasive exotic and native plants, and illegal trade and collecting. This rule implements Federal protection and recovery provisions afforded by the Act.

**DATES:** Effective November 4, 1997.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Pennsylvania Field Office, U.S. Fish and Wildlife Service, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

**FOR FURTHER INFORMATION CONTACT:** Carole Copeyon, Endangered Species Biologist, at the above address (telephone 814/234–4090; facsimile 814/234–0748).

**SUPPLEMENTARY INFORMATION:**

#### Background

The bog turtle was first described and named as Muhlenberg's tortoise (*Testudo muhlenbergii*) by Johann David Schoepff in 1801 based on specimens received in 1778 from Reverend Heinreich Muhlenberg of Lancaster County, Pennsylvania. In 1835, L.J. Fitzinger transferred the species to the genus *Clemmys*, where it remains today (Barton and Price 1955). In 1917, Dunn considered bog turtles within the southern range to be distinct, and classified the southern population as *Clemmys nuchalis* (Amato, Behler, Tryon, and Herman 1993). This taxon was subsequently synonymized with *Clemmys muhlenbergii*; however, researchers still question the taxonomic status of the northern and southern populations (Amato *et al.* 1993, Klemens *in press*). Initial data from recent preliminary genetic studies, based on examination of variability at the 16S ribosomal gene, suggest that there may not be significant genetic differences between the northern and southern populations. However, due to the conservative nature of this gene in other species, any definitive conclusions concerning genetic differences between the northern and southern populations is premature (Amato *et al.* 1993).

The bog turtle is sparsely distributed over a discontinuous geographic range extending from New England south to northern Georgia. A 250-mile gap within the range separates the species into distinct northern and southern populations (Klemens *in press*, Tryon 1990, Tryon and Herman 1990). The

northern population extends from southern New York and western Massachusetts southward through western Connecticut, New Jersey and eastern Pennsylvania, to northern Delaware and Maryland. Disjunct populations previously occurred in western Pennsylvania and in the Lake George and Finger Lakes regions of New York. The western Pennsylvania and Lake George populations have been extirpated, and only a remnant population exists at one remaining site in the Finger Lakes region. The southern population occurs in the Appalachian Mountains from southwestern Virginia southward through western North Carolina, eastern Tennessee, northwestern South Carolina, and northern Georgia. The southern population also occurs in the upper piedmont physiographic province of North Carolina. The species' disjunct distribution is thought to be the result of Pleistocene and post-Pleistocene climatic changes (Lee and Norden 1996).

The Act defines a species to include any subspecies of fish or wildlife or plants, or any distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature. Based on the disjunct distribution of this species, the northern population of the bog turtle is considered a DPS and, therefore, a separate species under the Act.

The bog turtle is the smallest member of the genus *Clemmys,* with the carapace (upper shell) of adults measuring 7.5 to 11.4 centimeters (3.0 to 4.5 inches) in length (Bury 1979). The domed carapace is weakly keeled and ranges in color from light brown to ebony. The scutes of the shell often have lighter-colored centers resembling a starburst pattern (Herman and George 1986). The plastron (lower shell) is brownish-black with contrasting yellow or cream areas, often along the midline. This species is readily distinguished from other turtles by the large, conspicuous bright orange, yellow, or red blotch found on each side of the head. The species is sexually dimorphic. Males have concave plastrons and long, thick tails, and the vent of the male is located beyond the posterior carapace margin. Females have proportionately higher carapaces, flat plastrons, and relatively short tails, and the vent of the female is located beneath the carapace edge (Bury 1979, Klemens *in press*).

Bog turtles are semi-aquatic and are only active during part of the year (Barton and Price 1955). In the northern part of their range, they are active from April to mid-October (Arndt 1977, Nemuras 1967). Reported periods of inactivity in July and August may be an artifact of collecting bias and the difficulty of locating turtles at that time of year (Lovich, Herman, and Fahey 1992). Bog turtles hibernate from October to April, often just below the upper surface of frozen mud or ice (Chase, Dixon, Gates, Jacobs, and Taylor 1989). Their varied diet consists of beetles, lepidopteran larvae, caddisfly larvae, snails, nematodes, millipedes, fleshy pondweed seeds, sedge seeds, and carrion (Barton and Price 1955, Nemuras 1967). Where population estimates are available, bog turtles have been found at densities ranging from 7 to 213 turtles per hectare (Chase *et al.* 1989). Chase *et al.* (1989) found an average of 44 turtles per site at 9 study sites in Maryland.

Female bog turtles reach sexual maturity between 5 and 8 years of age (Barton and Price 1955, Ernst 1977). Mating occurs in May and June, and females deposit from two to six white eggs in sphagnum moss or sedge tussocks in May, June, or July (Arndt 1977, Herman 1990, Herman and George 1986, Klemens *in press*). Unlike most other semi-aquatic turtles, bog turtles do not leave their wetland habitat and travel to dry, upland areas to lay eggs. ''Instead, they select slightly elevated sites, generally on *Carex stricta* tussocks, for nesting within their marshy habitat. Nesting areas typically have limited canopy closure, support an array of moisture tolerant, low vegetation, and provide ample solar exposure'' (Robert Zappalorti, Herpetological Associates, *in litt.* 1997). The eggs hatch after an incubation period of 42 to 56 days (Arndt 1977, Herman 1990), and the young emerge in August or early September (Arndt 1977, Barton and Price 1955). Infertile eggs are common (Arndt 1977, Herman 1990, Tryon 1990), and not all females produce clutches annually (Tryon 1990). Also, there is no evidence to suggest that multiple clutches are deposited in a single season.

Bog turtles inhabit shallow, spring-fed fens, sphagnum bogs, swamps, marshy meadows, and pastures which have soft, muddy bottoms; clear, cool, slow-flowing water, often forming a network of rivulets; and open canopies (Arndt 1977, Barton and Price 1955, Herman and George 1986, Klemens *in press*). In Maryland, Chase *et al.* (1989) reported that bog turtles were found in circular basins with spring-fed pockets of shallow water, a substrate of soft mud and rock, dominant vegetation of low grasses and sedges, and interspersed wet and dry pockets. In these types of habitats, bog turtles often utilize the runways of muskrats and meadow voles (Barton and Price 1955, Nemuras 1967, Taylor *et al.* 1984). Bog turtles have been found at elevations ranging from near sea level in the north to 1500 meters (4500 feet) in the south (Herman and George 1986).

Bog turtles usually occur in small, discrete populations occupying suitable wetland habitat dispersed along a watershed (Collins 1990). These wetlands are a mosaic of micro-habitats which include dry pockets, saturated areas, and areas that are periodically flooded. They depend upon this diverse hydrological mosaic, utilizing shallow water in spring, and returning to deeper water in winter (Chase *et al.* 1989). Unless disrupted by fire, beaver activity, grazing, or periodic wet years, open-canopy wetlands are slowly invaded by woody vegetation. They undergo a transition into closed-canopy, wooded swamplands that are unsuitable for habitation by bog turtles (Klemens *in press*, Tryon 1990). Historically, bog turtles probably moved from one open-canopy wetland patch to another, as succession closed wetland canopies in some areas, and natural processes (e.g., beaver activity or fire) opened canopies in other areas (Klemens 1989).

Several plant species commonly associated with bog turtle habitats include alders (*Alnus* sp.), willows (*Salix* sp.), sedges (*Carex* sp.), sphagnum moss (*Sphagnum* sp.), jewelweed (*Impatiens capensis*), rice cut-grass (*Leersia oryzoides*), tearthumb (*Polygonum sagittatum*), arrow arum (*Peltandra virginica*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*) and bulrushes (*Juncus* sp. and *Scirpus* sp.) (Arndt 1977; Barton and Price 1955; Herman and George 1986; Taylor, Dawson, Beall, and Schaeffer 1984). Pedestal vegetation, such as tussock sedge (*C. stricta*) and sphagnum moss, are utilized for nesting and basking (Gelvin-Innvaer and Stetzar 1992, Klemens *in press*).

Currently, many wetlands occupied by bog turtles in agricultural areas are subject to livestock grazing. Light to moderate grazing may function to impede succession by preventing or minimizing the encroachment of invasive native and exotic plant species, thereby maintaining an intermediate stage of succession (Smith 1994, Tryon 1990). It has been suggested that in precolonial times the grazing activities of large herbivores, such as bison (*Bison bison*) and elk (*Cervus canadensis*), may have been important in maintaining bog turtle habitat (Lee and Norden 1996). The occurrence of bog turtles in wetlands grazed by livestock is probably an instance where grazing by livestock

has either replaced grazing by native herbivores or replaced one of the other historical factors that would have acted to maintain the wetlands in an early successional stage.

Due to the bog turtle's rarity, small size, predator-evasive behavior (i.e., tendency to burrow rapidly into the mud), and habitat preferences (e.g., dense herbaceous vegetation), it is difficult to obtain reliable bog turtle population demographics. This lack of data has led to a misconception as to the number of healthy populations found throughout the species' range. For example, some documented bog turtle sites support populations consisting primarily of old individuals. These populations are slowly disappearing due to negligible recruitment of juveniles over a sustained period of time (Klemens 1989).

A protocol was developed to assess the capacity of sites to maintain viable populations of bog turtles. Known as the ''Standardized Bog Turtle Site-quality Analysis'' (Michael Klemens, Wildlife Conservation Society, *in litt.* 1993), it groups bog turtle occurrences into sites based on the likelihood of turtles moving between documented occurrence locations and interbreeding. A site is ranked according to four factors—(1) habitat size and degree of fragmentation; (2) the presence of invasive plants and later successional species; (3) immediate threats such as wetland ditching, draining, filling or excavation; and (4) the type and extent of land use in the area. Where adequate data are available, sites are also ranked according to population size and evidence of recruitment.

Using this site-quality analysis in 1993 and 1994, the individuals most familiar with each site (the primary bog turtle researcher(s) in each State) assessed and ranked the suitability of almost every known northern population site. The ranking process resulted in each site receiving a numerical score, and based on these scores, each site was then ranked as good, fair, or poor. By incorporating factors related to habitat quality and threats, these rankings reflect the suitability of the sites to maintain viable bog turtle populations. The classification system was based on researchers' best professional judgments regarding site suitability. The classifications based upon these scores are conservative for several reasons. Threats from illegal collecting were not considered in the rankings. Rankings were often based on interpretation of old maps (more than 10 years old); therefore, recent land use changes such as development were not considered. Also, at some sites the presence of turtles had not been confirmed for over 10 years.

Occurrence refers to a documented specific bog turtle location (a single wetland or a road-crossing sighting), one or more of which are included in a site. Due to widespread wetland habitat fragmentation throughout the turtle's range, most sites are comprised of only one small extant occurrence, often isolated from other such occurrences.

Of 191 known extant bog turtle sites within the northern population in 1996, 33 were classified as good, 67 as fair, 76 as poor, and 15 as unknown status. The State-by-State summaries given below present information primarily about the status and distribution of extant northern bog turtle populations/sites within each State.

In Connecticut, bog turtles are found in the northwestern corner of the State in Fairfield and Litchfield Counties. All five remaining populations are found on private lands; four of these populations are classified as fair and one as poor (Julie Victoria, Connecticut Division of Wildlife, *in litt.* 1994).

In Delaware, bog turtles were historically reported from 11 localities in the piedmont and coastal plain of New Castle County (Arndt 1977). Currently, only four sites are known to support bog turtles, and all of these are classified as fair. Two of these sites occur on State lands and two on private property (Lisa Gelvin-Innvaer, Jay Greenwood and Bill Zawaki, Delaware Division of Fish and Wildlife, *in litt.* 1994).

All three known bog turtle populations in Massachusetts occur on private property in southern Berkshire County. Two of these sites receive some degree of protection through landowner conservation agreements. One population is considered good, one fair, and one poor.

Maryland's 65 remaining extant bog turtle sites occur in the piedmont region of Baltimore, Carroll, Cecil and Harford Counties, with approximately 97 percent of the habitat privately owned and the other 3 percent in State ownership (Scott Smith, Maryland Department of Natural Resources, *in litt.* 1994). Seventeen of these sites are classified as good, 23 as fair, and 25 as poor. In 1995 and 1996, five additional bog turtle sightings were documented from Harford, Baltimore, and Carroll Counties. However, most of these occurrences are components of previously identified and ranked sites (Smith, *in litt.* 1996).

In New Jersey, there are 53 known extant bog turtle sites in Burlington, Hunterdon, Monmouth, Morris, Ocean, Somerset, Sussex, Union, and Warren counties (James Sciascia, New Jersey Department of Fish, Game and Wildlife, and Robert Zappalorti, Herpetological Associates, Inc., *in litt.* 1994; Sciascia, *in litt.* 1997). Eight of these sites are classified as good, 21 as fair, 18 as poor, and 6 are of unknown status. Approximately 90 percent of the turtle habitat in New Jersey is privately owned, while the State and Federal governments own 5 percent each (Sciascia and Zappalorti, in *litt.* 1994).

The New Jersey Endangered and Nongame Species Program recently conducted extensive surveys to locate and document bog turtle habitat. From 1993 to 1995, the habitat suitability of 473 wetlands in Hunterdon, Somerset, Sussex, and Warren counties was assessed. Only 77 sites (16 percent) contained potentially suitable bog turtle habitat, and bog turtles were found at only 8 of these wetlands (Sciascia 1996). In 1996, additional surveys conducted in Sussex County documented 16 new bog turtle occurrences, primarily in calcareous fen habitats. These fens are restricted to a 40-square-mile area in central Sussex and northern Warren counties. The discovery of bog turtles in calcareous fen habitats is important to the species' conservation within this area of New Jersey and neighboring Pennsylvania. Fens are primarily shrub and herb communities formed in low-lying areas where groundwater percolates over limestone bedrock. This alkaline seepage water most likely retards the growth of canopy-closing trees such as red maple. The persistence of this type of shrub/herb community could account for the presence of bog turtles (James Sciascia, New Jersey Department of Fish, Game and Wildlife, *in litt.* 1996).

The bog turtle's range in New York is concentrated primarily in the extreme southeastern corner of the State. Disjunct populations historically occurred in the Lake George area in eastern New York, in the Finger Lakes region in western New York, and in south central New York. The Lake George and south central populations have been extirpated, and only one extant Seneca County site remains in the Finger Lakes region (Alvin Breisch and Michael Kallaji, New York Department of Environmental Conservation, and Paul Novak, New York Natural Heritage Program, *in litt.* 1994; Novak, *in litt.* 1997). Potentially, 22 sites remain in southeastern New York; however, only 17 are considered extant. Of the 18 total remaining extant sites in New York (Seneca, Columbia, Dutchess, Putnam, and Orange counties), 5 are considered good, 6 fair

and 7 poor. Nearly all bog turtle habitat (99 percent) occurs on private lands; the remaining 1 percent is found on State lands (Breisch *et al., in litt.* 1994).

In Pennsylvania, bog turtles are still found in 13 of the 17 counties from which the species was previously reported (Adams, Berks, Bucks, Chester, Cumberland, Franklin, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, and York). Of the 34 remaining sites evaluated, 2 sites are considered good, 8 fair, and 24 poor. Approximately 85 percent of the bog turtle habitat is found on private lands, with the remainder occurring on State and Federal lands (10 percent and 5 percent, respectively) (Barton, *in litt.* 1994). In addition, between 1994 and 1996, nine new sightings were reported from Berks, Chester, and Northampton counties. These sites have yet to be evaluated; however, some appear to be small and marginal in quality.

The extent of the captive bog turtle population is poorly documented at this time, with the exception of bog turtles held by zoological institutions. According to data from the International Species Information System (ISIS), 102 bog turtles are currently held by 16 zoos in the United States; 64 percent of these turtles are captive born and 24 percent wild born (Judy Hendrickson, ISIS, *in litt.* 1997). Only a few people within the range of the northern and southern populations have valid State permits to possess bog turtles or conduct studies of wild turtles. Although the full extent of the illegally-held bog turtle population is unknown, based on evidence of collection and trade (see the ''Summary of Factors'' section), it is likely to greatly exceed that of the legally-held population.

Based on documented losses of bog turtles and their habitat, the northern population has declined by at least 50 percent, with most of the decline occurring over the last 20 years. Habitat destruction and illegal collecting for the pet trade are the primary threats to the species. Widespread alteration of bog turtle habitat has resulted from the draining, ditching, dredging, filling, and flooding of wetlands for residential, urban, and commercial development; road construction; agricultural activities; and pond and reservoir construction. The proximity of many remaining bog turtle populations to rapidly developing areas also poses a significant threat to the species.

**Previous Federal Action**

The bog turtle was first recognized as a Category 2 candidate species by the Service in the December 30, 1982, **Federal Register** notice of review (47 FR 58454). It was later retained as a Category 2 species in subsequent notices of review (60 FR 37958, September 18, 1995; 54 FR 554, January 6, 1989; and 56 FR 58804, November 21, 1991). Reclassification of the bog turtle to Category 1 was reflected in the November 15, 1994, animal notice of review (59 FR 58982). On February 28, 1996 (61 FR 7457), the Service published a notice of review that no longer included species formerly referred to as Category 2 candidate species. The notice revised the definition of the term ''candidate'' as taxa for which the Service has on file sufficient information on biological vulnerability and threats to list them as endangered or threatened species. The northern population of the bog turtle was included as a candidate in this February 28 notice of review. On January 29, 1997, the Service published a proposed rule in the **Federal Register** (62 FR 4229) to list the northern population of the bog turtle as threatened and the southern population as threatened due to similarity of appearance.

The processing of this final rule conforms with the Service's listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events: (1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through enactment of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority to resolving the listing status of outstanding proposed listings (Tier 2). A lower priority is assigned to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered (Tier 3). The lowest priority is given to processing critical habitat determinations, delistings, and other reclassifications (Tier 4). Processing of this final rule is a Tier 2 action since it resolves the conservation status of a proposed species.

In 1975, the bog turtle was added to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in order to monitor trade in the species. In 1991, the New York Zoological Society submitted a proposal to the Service requesting the transfer of the bog turtle from Appendix II to Appendix I of CITES (Anon. 1991). In response to a notice (56 FR 33895; July 24, 1991) calling for changes to the CITES Appendices, a total of 13 comments were received concerning the bog turtle proposal. All commenters recommended transferring the bog turtle from Appendix II to Appendix I due to the increased number of bog turtles being advertised for sale, the increased price being paid for individuals and pairs, and illegal trade not being reported under CITES. In the March 4, 1992, **Federal Register** notice (57 FR 7722), the Service announced that the party members to CITES agreed to transfer the bog turtle from Appendix II to Appendix I; and on June 11, 1992, the species was officially added to Appendix I.

**Summary of Comments and Recommendations**

In the January 29, 1997, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Notices were published in newspapers across the range of the species inviting public comment.

On March 14, 1997, the Service received a written request for a public hearing from Mr. Gary Hoffman, Chief Engineer for the Pennsylvania Department of Transportation (PennDOT). As a result, on April 3, 1997, the Service published a notice in the **Federal Register** (62 FR 15873) announcing the public hearing. The Service conducted a public hearing on April 21, 1997, at the Oley High School in Oley, Pennsylvania. Testimony was taken from 7:00 to 9:00 p.m. (Eastern Standard Time). Thirty-two of the approximately 200 people attending the hearing presented testimony. During the comment period, the Service received 237 comments (letters and oral testimony) from 15 State agencies; 6 local governments; and 216 individuals, groups, and organizations. Eight opposed, 218 supported, and 11 were neutral on the proposed action.

The Service has reviewed all of the written and oral comments received during the comment period. Some comments dealt with matters of opinion or issues unrelated to the question of

listing, and are, therefore, not addressed as part of this rulemaking. Comments updating the data presented in the ''Background'' or ''Summary of Factors Affecting the Species'' sections are incorporated into those sections of this final rule. Opposing comments and other substantive comments concerning the rule have been organized into specific issues, which may be paraphrased. Comments of a similar nature are grouped together by issue. These issues and the Service's response to each are summarized as follows.

*Issue 1*

Two commenters thought the Service should consider economic impacts when listing species. One commenter further contended that ''all state and federal actions designed to protect alleged threatened and/or assumed endangered species pursuant to the ESA should demonstrate that the benefits to humans exceed the costs to humans.''

*Service Response:* Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''based solely on biological criteria and to prevent non-biological criteria from affecting such decisions'' (H.R. Rep. No. 97–835, 97th Cong., 2d Sess. 19 (1982)). As further stated in the congressional report, ''economic considerations have no relevance to determinations regarding the status of species.'' Because the Service is specifically precluded from considering economic impacts in a final decision on a proposed listing, the Service did not consider the possible economic consequences of listing the bog turtle.

*Issue 2*

Two commenters contended that the Service did not provide adequate opportunity for public comment, and should therefore consider extending the comment period and holding additional public hearings.

*Service Response:* The Service went through an extensive notification process to make the public aware of the proposal, including **Federal Register** notification, letters to specific concerned parties, and notifications to local newspapers. In order to increase the opportunity for public comment, the Service had a 90-day comment period on the proposed rule, although only a 60-day comment period is required. In response to a request by the PennDOT, the Service also held a public hearing within the core of the bog turtle's range in Pennsylvania. These processes were described at the beginning of this section.

*Issue 3*

One commenter requested additional information regarding the scientific basis for identifying a species as federally threatened when the species is not considered threatened throughout its entire biological range.

*Service Response:* The Endangered Species Act requires the Secretary of the Interior (or Commerce, depending on jurisdiction) to determine whether species are endangered or threatened. A ''species'' as defined under the Act includes species, subspecies and ''any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' From a biological perspective, the Act supports the goals of conserving genetic resources, and maintaining natural systems and biodiversity over a representative portion of a species' historical occurrence. In that respect, the listing of DPS's may allow the Service to protect and conserve species and the ecosystems upon which they depend before a large-scale decline occurs that would necessitate listing a species throughout its entire range. This may allow protection and recovery of declining organisms in a more timely and less costly manner, and on a smaller scale than the more costly and extensive efforts that might be needed to recover an entire species.

*Issue 4*

One commenter alleged that the northern population of the bog turtle is not a DPS as defined by Service policy, partially due to the lack of documented genetic differences between the northern and southern populations.

*Service Response:* According to the Service's policy on Distinct Population Segments (61 FR 4725), three elements are considered regarding the potential recognition of a DPS as endangered or threatened—(1) discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

With respect to the bog turtle, the northern population meets the ''discreteness'' criterion in that it is markedly separated from the southern population by a distance of approximately 250 miles. Evidence of such discreteness may include genetic or morphological differences, but this is not a requirement. The northern population of the bog turtle meets the ''significance'' criterion because loss of this DPS, which occurs in seven States and represents over 50 percent of the species' range, would result in a significant void in the range and distribution of the species. The ''status'' criterion is met in that the northern population of the bog turtle, when evaluated with respect to the Act's listing factors (see the ''Summary of Factors Affecting the Species'' section), qualifies for listing as threatened.

*Issue 5*

With regard to habitat loss, one commenter questioned whether the Service had historical data on habitat, populations, and the species' range, or only considered information from the past 20 years, which may represent an artificial baseline and an ''unusual period in the species' natural history.'' In considering the species historical baseline, this commenter questioned whether bog turtles may have occurred over a smaller range in the distant past, but later followed deforestation into open areas and livestock pastures along floodplains.

*Service Response:* In assessing the status of the bog turtle, the Service reviewed the best available information regarding populations, past and present distribution, and habitat loss. Information provided by State wildlife agencies, natural heritage programs, researchers, and others dated back to the late 1800's, and indicated a reduction in range, and loss of habitat and populations over this period of time, with the documented loss dramatically accelerating over the past 20 years. In this respect, the past 20 years may represent an unusual period in the species' natural history—a period of unprecedented decline.

Bog turtles inhabit open canopy wetlands, a habitat type which was more common historically than today because (1) historically, the ecological factors of fire and beaver activity were unimpeded in creating and maintaining these areas, and (2) since the 1800's, wetland draining, dredging, and filling have become a prevalent practice of land conversion for development, agriculture, and resource extraction. Bog turtles are occasionally found in grazed wet pastures, and it has been suggested that in precolonial times the grazing activities of large herbivores, such as bison and elk, may have been important in maintaining bog turtle habitat (Lee and Norden 1996). Thus, the occurrence of bog turtles in wetlands lightly grazed by livestock is probably an instance where grazing by livestock has replaced grazing by native herbivores, or replaced one of the other historical factors that

would have acted to maintain the wetlands in an early successional stage.

*Issue 6*

One commenter suggested that the decline in bog turtle habitat may be due to farm pastures evolving into habitat areas unsuitable for bog turtles.

*Service Response:* Bog turtles are occasionally found in grazed wet pastures, and vegetative succession in these habitats is a contributing factor, though not the only factor, to the species' decline. Light to moderate grazing may impede vegetative succession by preventing or minimizing the encroachment of invasive native and exotic plant species, and it appears that this level of grazing helps to maintain the intermediate stage of succession required by the bog turtle (Smith 1994, Tryon 1990). When grazing is discontinued the habitat becomes less suitable (or unsuitable) due to succession.

*Issue 7*

Three commenters requested that the Service delay or not list the bog turtle due to an insufficient amount of data to justify listing. One commenter alleged that a single modeling study (i.e., the assessment of sites using the ''Standardized Bog Turtle Site-quality Analysis'') rather than a sufficient number of diverse studies were used to support the listing. This commenter also contended that the information used to justify the listing was not adequate because the Service did not cite any studies that might question the validity of the proposal, and that where there are data gaps, the Service must complete studies to close those gaps. No data or studies were provided or cited by these commenters supporting their assertion that the information utilized by the Service was incomplete or incorrect.

Expressing a contrary view, peer reviewers and several other biologists familiar with the species stated that the Service had clearly documented the species status and threats to its existence, and concurred that listing was warranted.

*Service Response:* The Service concludes, as detailed in the ''Background'' and ''Summary of Factors Affecting the Species'' sections, that there are sufficient biological data to warrant listing of the bog turtle under the Act. Information, studies, field data, and site analyses provided by biologists, law enforcement personnel, and others familiar with the bog turtle and its habitat provided adequate information on the distribution, habitat requirements, and, most importantly, threats to the bog turtle to warrant the present action. The listing process includes an opportunity for the public to comment and provide information that is evaluated and considered by the Service before making a final decision. The additional data provided by respondents during the comment period, and other appropriate information available to the Service have been incorporated into this final rule; none of these data indicated that this taxon is not threatened.

*Issue 8*

Two commenters contended that the Service has insufficient population data to justify listing the bog turtle.

*Service Response:* The Service agrees that estimates of total population are lacking for this species; however, the Service considered several additional factors that are also important in developing a biologically accurate species status assessment. The biological security of many declining species is more a function of the number of healthy local populations than the total number of individuals in the wild. In addition to considering the number of sites and subpopulations comprising the northern population, the Service also considered factors such as the size of existing subpopulations, historical and current rates of decline, the species' low recruitment potential, distribution and proximity of subpopulations, quantity and quality of available habitat, genetic diversity, and imminent and potential threats to the species and its habitat. Therefore, although quantitative sampling has not been completed throughout the range of the bog turtle, pertinent and significant information regarding the other aspects of the species' status is available. The decreasing number of bog turtle sites and the quality of these remaining sites throughout the species' historical and current distributions are a more accurate reflection of the turtle's status than are rough estimates of the total number of bog turtles. When all of these factors are considered for the bog turtle, it is clear that listing is warranted.

*Issue 9*

Seven commenters questioned or criticized the use of a model (i.e., the ''Standardized Bog Turtle Site-quality Analysis'') to assess bog turtle sites, claiming that such evaluations are qualitative and subjective, and that such assessments should be based on field data. One commenter requested additional information regarding the methods and data used to characterize sites.

*Service Response:* Extensive surveys of potential wetland habitats have been conducted for bog turtles within the range of the northern population. Most of these surveys were designed to primarily document bog turtle presence, not to evaluate habitat quality, threats, or population demography. Merely knowing the total number of occupied bog turtle sites did not allow the Service to adequately assess the status of this species, however. Therefore, a ''Standardized Bog Turtle Site-quality Analysis'' was developed by Dr. Michael Klemens in conjunction with other bog turtle researchers to qualitatively assess the capacity of sites to maintain viable populations of bog turtles. The Service requested that State wildlife agencies, natural heritage programs, and researchers evaluate known bog turtle sites using this site analysis protocol. The evaluators used site-specific information on habitat conditions and threats obtained from field investigations and maps. Using these data, each site received a numerical score ranging from one to five for each of four factors, including—(1) habitat size and degree of fragmentation; (2) percent coverage of invasive plants and later successional species; (3) proximity of major threats (e.g., wetland alteration via ditching, draining, filling, or excavation); and (4) the type and extent of land use within a one-mile radius of the site. When available, data on population size and recruitment were also used. Although qualitative in nature, the Service believes that this method presented a more objective approach to assessing the status of the bog turtle than simply looking at the total number of sites, without regard to habitat quality and threats. The methods and site data are contained within the administrative file (see **ADDRESSES** section).

*Issue 10*

Two commenters questioned whether certain factors (i.e., predation, flooding of habitat by beaver, mortality due to vehicles and livestock, and pollution) pose a sufficient threat to justify listing.

*Service Response:* Although these factors pose a significant threat to several known bog turtle sites, none of them, when considered alone, poses a sufficient threat to the northern population to justify listing. When making a listing determination, however, the Service assesses the potential impact of all threats to the species. Although listing of a species might not be justified based upon a single factor, when all factors are considered collectively, the threat may be substantial enough to warrant listing. Such is the case for the bog turtle (see

the ''Summary of Factors Affecting the Species'' section).

*Issue 11*

One commenter felt that the Service relied almost exclusively on previous habitat loss to justify the listing, rather than focusing on the present or threatened destruction, modification, or curtailment of the species' habitat.

*Service Response*: The Service considers a variety of factors in making a listing determination. Although historical habitat loss and rates of decline are considered during the species' status assessment, many other factors, including current rates of decline, potential and imminent threats, number and status of populations, and amount and quality of remaining habitat, are evaluated as well. Historical habitat loss and rates of decline are utilized by the Service to ascertain if a species is undergoing a precipitous or gradual decline. The Service considered the historical trend information in combination with all other information to determine whether listing was warranted.

*Issue 12*

One commenter questioned whether it was warranted to list the bog turtle in the north if most of the trade occurs in the south, where the species is not threatened.

*Service Response:* Trade occurs in the range of the northern population and poses a threat to the northern population, as documented under factor ''B'' in the ''Summary of Factors Affecting the Species'' section. When considered in conjunction with the other factors affecting the species, listing of the northern population is warranted.

*Issue 13*

Two commenters questioned the degree of threat posed by illegal collecting. Specifically, one commenter did not believe that over 2000 bog turtles had been shipped overseas for trade, thinking the number more likely to be 20. Another commenter contended that the Service's ''inference that demand for turtles is increasing simply because the price is increasing is questionable.'' Neither commenter supplied the Service with any data or further information to substantiate these assertions.

*Service Response:* Considering the number of bog turtles that have been found in the possession of individual collectors, the Service has no reason to discount the overseas trade information. The Service's inference about price and demand for turtles is based on the Service's experience with other species vulnerable to trade. This inference is also based upon principles of economics (when supply does not meet demand, price increases); increasing prices for bog turtles likely mean that demand is increasing while the supply of wild bog turtles is decreasing.

Threats from illegal collection are real. Because bog turtles are not uniformly distributed over their range, collecting is often focused on a known source or site, thereby threatening the entire population at the site with extirpation. Listing pursuant to the Act will close the loopholes in the various existing protective laws and make it easier to prove illegal collecting activities.

*Issue 14*

Six commenters questioned the Service's assertion that existing regulations are inadequate to protect the bog turtle. They argued that Federal listing is unnecessary and redundant because the bog turtle is already protected as a State-listed species. Two of these commenters argued that existing wetland regulations are adequate to protect the bog turtle.

Expressing a contrary position, 38 commenters (including all peer reviewers) noted that Federal, State, and local laws have been ineffective in providing protection for the bog turtle and its habitat. Several commenters noted that bog turtle habitat is particularly vulnerable due to various provisions of Federal and State wetland regulations, including agricultural exemptions, general permits, and nationwide permits. Referring to Pennsylvania's wetland permitting program, the Monroe County Conservation District noted that ''tracking of the state's program demonstrates that permits are generally being issued as requested which will further fragment habitat locally over time.'' Another commenter noted that between 1988 and 1996, 1181 actions were authorized through general permits, and none were denied in 3 Pennsylvania counties inhabited by bog turtles. Several commenters noted that State endangered species laws are ineffective in deterring collection and trade.

*Service Response:* Based on an examination of the available information, the Service has determined that proposed and on-going damage or destruction of wetlands due to development and agriculture throughout the range of the northern population is prevalent despite existing Federal, State, and local regulations, and that existing levels of protection are not adequate to assure the survival of the bog turtle. In addition, although the bog turtle is State-listed throughout its range, State laws are not sufficient or able to address the threats of collection and trade. For example, some State law penalties are not as stringent as others, and law enforcement priorities vary between States. A more detailed discussion of the inadequacy of existing regulations can be found under the ''Summary of Factors Affecting the Species'' section. Listing pursuant to the Act will provide consistency by providing a uniform regulation that applies across all States.

*Issue 15*

Two commenters questioned the reliability of surveys in concluding that previously occupied sites were no longer occupied by bog turtles. Specifically, one commenter did not believe that the number of extirpated populations was as high as reported. He noted that surveyors are not always successful in locating bog turtles, even in wetlands where turtles are known to occur. Another commenter contended that some sites may no longer exist, but this ''may only be due to the bog turtle populations moving to another site.''

*Service Response:* The Service, State wildlife agencies, and bog turtle researchers recognize the difficulties associated with conducting bog turtle surveys; even under the best conditions, bog turtles can be difficult to locate. For those previously documented bog turtle sites that still bore evidence of potentially suitable habitat, repeated surveys were conducted by qualified surveyors before concluding that bog turtles were indeed extirpated from the site.

Although historically bog turtles probably moved from less suitable wetlands (e.g., those undergoing succession) to more suitable wetlands (e.g., those recently formed, or where succession was set back by natural processes), it is much less likely that such movements would be successful today. Bog turtle habitats are now highly fragmented, making successful immigration and emigration difficult due to loss of wetland travel corridors, and the prevalence of roads, subdivisions, and agricultural land near, and often encircling, many sites. In addition, more habitat is becoming unsuitable, and fewer potentially suitable wetland sites are becoming available because those natural processes that served to maintain and create bog turtle habitat have been suppressed or are no longer operative (see the ''Summary of Factors Affecting the Species'' section).

*Issue 16*

One commenter questioned the thoroughness and geographic extent of the surveys that had been conducted for the species range-wide, including the area between the currently known northern and southern populations.

*Service Response:* Prior to preparation of the proposed rule, the Service assessed the status of the northern and southern populations. At that time, the Service queried State wildlife agencies, natural heritage programs, and bog turtle researchers about the adequacy of surveys conducted to date. Based on their responses, approximately 10 to 20 percent of the potentially suitable bog turtle habitat within the northern range remains to be surveyed. Surveys of potential bog turtle habitat continue in most of the northern range States. Survey coverage is much less complete in the southern range States, particularly in North Carolina and Virginia, where less than 50 percent of the potentially suitable habitat has been surveyed. A comprehensive survey of the southern population is currently underway, as discussed under Issue 20. Numerous herpetological surveys have failed to locate bog turtles between the northern and southern populations.

*Issue 17*

The PennDOT proposed that a task force be established to develop a candidate conservation agreement for the bog turtle, rather than list the species. The PennDOT felt such an agreement would provide a greater benefit to the species than listing, while at the same time minimizing Federal intervention, and provide regulatory relief should the species be listed in the future. The PennDOT also indicated that they would be precluded from pursuing proactive efforts to conserve the bog turtle after listing occurs.

*Service Response:* Candidate conservation agreements are formal agreements between the Service and one or more parties (i.e., land owners, land managers, or State fish and wildlife agencies) to address the conservation needs of proposed or candidate species. The participants take on the responsibility of developing the agreement, and voluntarily commit to implementing specific actions that will remove or reduce the threats to the subject species, thereby contributing to stabilizing or restoring the species. Conservation benefits to the species may include an increase in habitat connectivity, restoration or enhancement of habitats, maintenance or increase of population numbers or distribution, and establishment of buffers for protected areas. The ultimate goal of any candidate conservation agreement is to remove threats to the species thereby eliminating the need for listing under the Act.

In order to preclude the need for listing the bog turtle, a sufficient number of candidate conservation agreements would have to be developed and implemented throughout the seven-State range of the northern population to remove enough threats for the Service to conclude that the bog turtle is no longer in need of protection under the Act. The Service has not been approached by any property owners, land managers, or State wildlife agencies regarding development of candidate conservation agreements. Also, although the PennDOT suggested the development of such an agreement, they have not proposed a specific plan, nor would they have control over implementation of such a plan since they do not own or manage land containing any known bog turtle sites.

Most State wildlife agencies within the range of the northern population have expressed support for Federal listing of the bog turtle, often citing the vulnerability of the species to illegal collection and the need for Federal listing to address this threat. Because candidate conservation agreements would be unable to address the significant threats of trade and illegal collection, their implementation would not preclude the need to list the bog turtle under the Act.

Regarding implementation of proactive efforts to conserve bog turtles, these efforts would be encouraged, not precluded, by the Service after listing. Because the bog turtle occurs primarily on private property, the Service fully realizes that recovery of this species will depend upon the voluntary cooperation of private landowners, and welcomes them as partners in the recovery effort. The Service will work to provide technical assistance to those property owners and land managers who wish to implement conservation measures for this species.

*Issue 18*

Forty-one commenters (including two peer reviewers) recommended that the Service list the northern population as endangered rather than threatened. Although little additional information was offered by these commenters to support the change in status, some argued that the threats (particularly the inadequacy of existing regulations) were substantial enough to support such a listing. Others contended that the information in the proposed rule supported an endangered listing, or felt that the species would receive better protection if designated as endangered.

The Tortoise and Freshwater Turtle Specialist Group of the International Union for the Conservation of Nature (IUCN) commented that they recently evaluated the status of the bog turtle and added it as ''endangered'' to their 1996 IUCN Red List. Based on the information in the proposed rule, as well as their extensive knowledge of the species and threats to its survival, they concluded that the northern population should be federally listed as endangered.

*Service Response:* Based on the available information on the bog turtle's status, and a careful assessment of threats, the Service proposed the bog turtle for listing as threatened. Although the northern population of the bog turtle faces serious ongoing and potential threats, it is not currently in imminent danger of extinction. Although some additional data on threats and the species' status were received during the public comment period, these data did not justify a change in the proposed classification of threatened. The Service, therefore, still believes that a listing of threatened is appropriate for the northern population.

*Issue 19*

One commenter stated that listing of the southern population must be based on more than its similar physical appearance to the northern population.

*Service Response:* Listing of the southern population as threatened due to similarity of appearance is based upon more than its similar physical appearance to the northern population, as detailed in the proposed rule and this final rule (see ''Similarity of Appearance'' section).

*Issue 20*

The Service received 10 comments disagreeing with the proposed listing of the southern population as threatened due to similarity of appearance. Four commenters recommended listing the bog turtle as threatened or endangered in Georgia, Tennessee, and/or South Carolina, specifically excluding North Carolina and Virginia. Six commenters recommended listing the entire southern population as threatened or endangered. In addition, one commenter stated that the Service has insufficient data on the southern population to say that it is not biologically threatened or endangered at this time.

*Service Response:* The northern and southern populations of the bog turtle can each be considered a DPS under the Service's DPS Policy (see discussion under Issue 4). However, while both

populations meet the ''discreteness'' and ''significance'' criteria under this policy, the Service only has sufficient status and threat data on the northern population to justify its listing.

Prior to proposing the northern population of the bog turtle for listing, the Service conducted a status review of both the northern and southern populations. Several factors weighed into the Service's decision not to propose the southern population for listing, including—(1) the recent discovery of bog turtle sites in the Piedmont physiographic province of North Carolina, well outside the species' previously known Appalachian Mountains range; (2) limited information regarding threats; and (3) inadequate survey coverage within the southern range. A comprehensive status survey of the southern population is currently underway and is anticipated to be completed by December 1999. The Service agrees that it is premature to draw any conclusions regarding the status of the southern population until additional survey and threat information becomes available.

Although the Service could have delayed action on the northern population until such time that additional data became available on the southern population, such an action would have been irresponsible considering the northern population faces documented and substantial threats, and forthcoming data on the southern population may or may not demonstrate that it qualifies for Federal listing.

Federal listing of only a portion of the southern population (e.g., bog turtles occurring in Georgia, South Carolina, and Tennessee) is not appropriate because subpopulations do not qualify as legitimate listing entities (i.e., DPS's) under the Service's DPS Policy. Also, boundaries between States are not considered when determining whether a population is ''discrete'' under the DPS Policy.

*Issue 21*

Five commenters expressed concerns that listing of the southern population as threatened due to similarity of appearance will result in intentional destruction of bog turtle habitat by landowners who fear the potential for future listing, who don't understand what the similarity of appearance listing means, or who don't believe that the southern population will be regulated differently from the northern population. Some of these commenters were also concerned that the special rule exempting incidental take would further contribute to loss of bog turtle habitat in the southern range.

*Service Response:* The Service recognizes that it has a responsibility to conduct outreach activities to ensure that the public understands the implications of the similarity of appearance listing for the southern bog turtle population. Because bog turtle collection and trade are already prohibited acts under State law throughout the southern range, Federal listing will have no effect on landowners within the southern range unless they are engaged in these already illegal activities. Wanton destruction of bog turtle habitat within the southern range, however, could precipitate the action that these landowners would most like to avoid (i.e., Federal listing of the southern population).

While the special rule for the southern population does exempt incidental take, this does not mean that the Service condones the destruction of bog turtle habitat in the southern range. The Service recognizes that the bog turtle is State-listed in all five southern range States, and hopes that land owners, land managers, and Federal, State and local agencies will take this into account and give the species the full consideration it deserves when planning and implementing projects.

*Issue 22*

The Connecticut Farm Bureau Association presented information which they felt contradicted the Service's assertion that deleterious agricultural practices are affecting the bog turtle. They stated that ''according to USDA/NARCS data, between 1982 and 1992, the amount of cropland still requiring conservation treatment declined by nearly a quarter. Pasture and forest acres needing conservation treatment also declined between 1982 and 1992.''

*Service Response:* While the information presented may reflect positive national trends in soil conservation, it also implies that progress is slow and incomplete (i.e., in 10 years, less than 25 percent of the land needing conservation treatment received such treatment). It also does not contradict available information on known and potential threats to bog turtles posed by agricultural activities, including conversion of wetlands to farm ponds; heavy grazing; hydrological alteration of wetlands (e.g., draining, ditching); and chemical and sediment input to wetlands.

*Issue 23*

Seven commenters criticized the Service's decision not to designate critical habitat for the bog turtle. Three of these commenters felt that the additional protection and recovery benefits afforded by such designation would outweigh the potential risk from increased collecting. Four commenters who opposed the listing stated that the Service's failure to identify critical habitat would mean that landowners could be found in violation of the Act without knowledge of where the species' habitat is located. They also contended that landowners have a right to know how the listing will affect use of their property.

Expressing a contrary view, several commenters concurred with the Service's decision not to designate critical habitat, citing the threat posed by illegal collection and the pet trade.

*Service Response:* The Service maintains that the risks associated with designation of critical habitat for the bog turtle outweigh any benefits of such designation. Once sites become publicly known, they can be quickly exploited by collectors; exploitation of sites by collectors soon after the sites had become publicly known has been documented. Due to the small size of existing populations and the low reproductive and recruitment potential of this species, the removal of even a few breeding adults can do irrevocable damage to a population. Therefore, due primarily to the threat of illegal collection, the Service concludes that designation of critical habitat is not prudent, as discussed in detail in the ''Critical Habitat'' section of this rule.

The Service appreciates the concern that landowners have about the potential implications of having a federally listed species on their property. Therefore, in order to increase awareness of the effect of listing on proposed and ongoing activities, and minimize the likelihood of landowners unknowingly affecting listed species and their habitat, the Service has identified those activities that would or would not constitute a violation of section 9 of the Act, as detailed in the ''Available Conservation Measures'' section. Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the appropriate Service Field Office. In addition, based on information provided by State wildlife agencies and natural heritage programs, the Service notified persons (within the northern range States) having known bog turtle habitat on their property about the proposed rulemaking, and will notify these landowners about the final listing as well.

*Issue 24*

One commenter noted that some bog turtles are legally possessed by Maryland citizens as grandfathered animals (i.e., they were in possession prior to State listing), and questioned whether it would be a violation of section 9 to possess these turtles.

*Service Response:* The Service would not consider it a violation of section 9 for a person to possess bog turtles, if at the time of Federal listing, those bog turtles were legally in their possession under a permit or other provisions (e.g., ''grandfathering'' provisions) of State law. Documentation (e.g., valid State permit) is recommended to serve as proof of legal possession. However, as with other listed species, a ''grandfathered'' bog turtle or its progeny cannot be sold in interstate commerce.

*Issue 25*

One commenter noted that the market value of the bog turtle will increase once the species is listed, which will likely lead to increased take from the wild. They recommended that the Service address this concern by either enhancing law enforcement activities, or allowing for the legal trade of captively-produced bog turtles to meet market demand.

*Service Response:* Although Federal listing of the bog turtle may increase its market value, it is unclear whether this will result in increased collection pressure. The Service recognizes that Federal listing of the bog turtle may serve as a deterrent to some collectors. The subsequent smaller market source for bog turtles would increase the vulnerability of large-scale illegal operations to exposure. Fortunately, public awareness about the plight of this species has increased dramatically since the proposed rulemaking. This has prompted some citizen groups to establish surveillance at bog turtle sites to protect the turtles from collection. The Service applauds the efforts of these groups, and recognizes that concerned citizens, landowners, and State law enforcement personnel have a vital role to play in protecting this vulnerable species from collection. The Service anticipates that its law enforcement efforts will increase as well in response to the Federal listing of the bog turtle.

The Service believes that if trade in captive-produced bog turtles were allowed, it would pose a significant threat to wild bog turtles. We have noted that despite State-listing throughout its range, and the existence of some captive breeding stock, bog turtles are still being collected from the wild. Also, considering the low reproductive potential of the species and the small number of bog turtles known to be legally in captivity, it is unlikely that there are enough bog turtles in captivity to legally supply the market demand. If trade were legalized and the demand could not be met by captive-produced turtles, it is very likely that turtles would be taken from the wild for direct sale and for use as breeders. In addition, it would be difficult, if not impossible, to devise a process that would preclude the possibility of substituting wild-caught turtles or eggs for those claimed to be captive-produced. Finally, it would be extremely difficult to prosecute a case of illegal take unless the actual taking from the wild was observed or extensive circumstantial evidence was available. Based on these factors, the Service believes that legalizing trade in bog turtles would be inconsistent with the Service's responsibilities to conserve, protect, and recover this species under the Act.

*Issue 26*

One commenter recommended that the Service define ''heavy grazing'' if violations of section 9 due to heavy grazing are foreseen. Several other commenters stressed the importance of light to moderate grazing in maintaining bog turtle habitat in an early successional stage, thereby preventing canopy closure and minimizing encroachment of invasive native and exotic plant species.

*Service Response:* The Service recognizes both the risks and the benefits associated with livestock grazing of bog turtle habitat. Where light to moderate grazing serves to maintain the suitability of bog turtle habitat, the benefits of grazing are likely to outweigh the risks (e.g., trampling of bog turtles or their nests, and nutrient input from animal excrement). Heavy grazing, however, is detrimental to bog turtles and their habitat. At the extreme, it is recognized by closely cropped vegetation and exposed soil (e.g., denuded, compacted or muddy) due to trampling and overgrazing. Due to the damage inflicted upon pasture land, heavy grazing is probably not a desirable or sustainable land use practice.

The Service recognizes that the terms light, moderate, and heavy grazing are subjective; however, at this time the Service is unable to quantify these terms with respect to potential positive and negative effects to bog turtles and their habitat. The Service looks forward to working cooperatively with the agricultural community, researchers, and others to determine what levels of grazing (e.g., animal densities, seasons, rotations, etc.) are most beneficial to bog turtles.

*Issue 27*

One commenter requested that if the Service proceeds with listing, information should be included with the listing to identify which population and/or habitat criteria must be met for the species to be considered no longer threatened.

*Service Response:* This type of information is not included in the listing; however, it will be included in the species' recovery plan. Recovery plans, which are developed after a species is listed, identify delisting criteria and the tasks which must be implemented to achieve recovery.

*Peer Review*

In conformance with Service policy on information standards under the Act (59 FR 34270; July 1, 1994), the Service solicited the expert opinions of three appropriate and independent specialists (Dr. Michael Klemens; Dr. Joseph Mitchell; and Dr. C. Kenneth Dodd, Jr.) regarding issues and assumptions relating to the biological and ecological information in the rule, and scientific data relating to the factors for listing. Comments received from these reviewers were supportive of Federal listing of the northern population.

Dr. Klemens indicated that the Service had conducted a ''thorough analysis of the biological, ecological, and commercial issues that threaten this turtle,'' and had accurately depicted the conservation status and viability of the northern population. He also thought that the species had surpassed the threshold of threatened and should be listed as endangered (see Issue 18 for the Service's response), based on the Service's data, his professional opinion, and ''given the alarming drop in both suitable habitat and viable populations.'' He stated that the prognosis for the northern population ''is very poor if this species is reliant upon the varied habitat and take protection offered by the range States and the total absence of protection from commercial exploitation afforded by the non-range States.'' He concurred that designation of critical habitat is not prudent. With regard to the southern population, he (1) concurred with its listing as threatened due to similarity of appearance; (2) felt that with large areas of potential habitat unsurveyed, it was impossible for the Service to draw any conclusions about the status of the southern population (see Issue 20 for the Service's response); and (3) was

concerned that incidental take under the special rule would reduce bog turtle habitat and populations (see Issue 21 for the Service's response).

Dr. Dodd also supported Federal listing of the bog turtle, concurring that illegal collection and trade posed a significant threat which States have been unable to address. He also agreed that loss of wetland habitat had reduced bog turtle populations, particularly within the northern range.

Dr. Mitchell recommended that the northern population of the bog turtle be listed as endangered, and the southern population be listed as threatened. Despite the lack of geographic survey coverage in North Carolina, he felt that the trends in land use in the south were similar to those in the north, and that in the next 20 to 30 years the southern population would be in the same shape the northern population is in now (see Issue 20 for the Service's response). He referred to the status of the northern population as ''dire'' and stated that with most of the known bog turtle populations occurring on private lands, ''remaining habitat will certainly be reduced in the very near future to a point where most of them will be unable to support viable populations.'' He questioned whether the Service may have been politically motivated in proposing the northern population as threatened instead of endangered, and stated that such a decision ''should be based solely on biological criteria.''

Dr. Mitchell agreed that the species is vulnerable to illegal collection and trade, and noted that bog turtles had even been stolen from the Atlanta Zoo, a locked facility. He also noted that a few days after a newspaper article appeared in the Richmond *Times-Dispatch* mentioning the proposed listing, he received ''information that several people in that area who collected turtles in the genus *Clemmys* for the pet trade were hard at work scouring topographic maps looking for potential sites to poach.''

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that the northern population of the bog turtle should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the bog turtle (*Clemmys muhlenbergii*) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

Habitat loss is a major factor for the past and present decline of bog turtles throughout much of their range. Wetland habitats have been drained and filled for development, agriculture, road construction, and impoundments. These activities have also severely fragmented the remaining habitat and have created physical barriers to movement, thus isolating existing bog turtle populations from other such sites.

Even when located in upland areas, development and agriculture can also cause indirect hydrological alterations of adjacent wetland habitats. If these alterations present a barrier to surface water or groundwater flow, the wetland can become wetter or drier, either of which may render the habitat less suitable or unsuitable for bog turtles. If surface water flow is intercepted, groundwater recharge may be reduced, potentially reducing water levels in adjacent wetlands.

The concentration of storm water runoff, such as discharges from storm water detention basins associated with developments, poses a threat to adjacent bog turtle habitat, as illustrated by a documented case of habitat destruction. A New Jersey bog turtle site was destroyed over the course of 4 years as water from an upland storm water detention basin was released into an adjacent wetland. The storm water discharge carved a channel through the wetland; modified the site hydrology by removing the surface inundation and many of the spring-fed seeps; and increased the invasion of woody and annual plant species which replaced the sedges and rushes typical of bog turtle habitat. Bog turtles no longer occur at this site (Torok 1994).

Development in the vicinity of wetlands also poses a threat when the water table is lowered due to the sinking of wells, or when roads act as barriers to the normal flow of surface water (Klemens 1988, 1989). Urban, commercial, and residential development contribute to increased traffic (leading to increased bog turtle road-kills), surface water pollution, and accelerated succession by invasive native and exotic plant species (due to changes in wetland hydrology, and suppression of natural factors that impede succession).

Untimely mowing or burning and the use of herbicides and pesticides on adjacent agricultural fields also degrade bog turtle habitat (Klemens 1988). Many wetlands occupied by bog turtles are located in agricultural areas that are subject to frequent livestock grazing. Light to moderate grazing impedes plant succession by minimizing the encroachment of invasive native and exotic plant species. However, heavy grazing destroys bog turtle habitat by cropping and trampling vegetation that is necessary for turtle nesting, basking, foraging, and cover.

Three of Connecticut's eight known bog turtle sites have already been extirpated. A Fairfield County population was obliterated by industrial development, and two Litchfield County populations were destroyed by pond construction. The five remaining sites are small, isolated pockets ringed by development, with ''no opportunity for turtle movement between locations for interbreeding or to escape successional changes'' (Julie Victoria, Connecticut Department of Environmental Protection, *in litt.* 1997). Residential development and natural plant succession have already contributed to the partial loss of two of these extant populations in Litchfield and Fairfield counties (Victoria, *in litt.* 1994). Also, in the vicinity of the current populations are ''remnants of what were at one time suitable habitats which have been altered by agricultural practices, housing development, ponding, etc.'' (Hank Gruner, Science Center of Connecticut, *in litt.* 1997).

Only a small fraction of Delaware's freshwater wetlands are potential bog turtle habitat, and between approximately 40 and 50 percent of the State's freshwater wetlands have already been lost (Tiner 1985). The four remaining bog turtle populations are threatened by invasive exotic plant species, collecting, and development (Gelvin-Innvaer and Stetzar 1992); one of these sites is also threatened by a proposed reservoir project.

Maryland's 178 historical bog turtle occurrence locations (Taylor *et al.* 1984) are represented by 90 (population analysis) sites, 25 of which have been lost in the last 15 years (Smith, *in litt.* 1994). Plant succession and exotic plant invasions have caused the extirpation of turtles at some of these sites, while other sites were lost due to wetland destruction and alteration and stream channelization. In addition, heavy grazing has been implicated in the loss of at least six sites (Smith, *in litt.* 1994).

Of the remaining 65 sites, 17 are considered good, 23 fair and 25 poor. Habitat at 31 of these sites has been partially destroyed or degraded by pond construction (6 sites), filling of wetlands (1 site), heavy grazing (4 sites), and wetland ditching, draining, tiling and

stream channelization (13 sites) (Smith, *in litt.* 1994). Succession, exotic plants, pollution, and beaver activity also pose a threat to many of the remaining populations. In addition, at least five wetlands known or suspected to support bog turtle populations are threatened by proposed highway bypass projects and residential developments (Jeffrey Trulick, *in litt.* 1997).

In Massachusetts, the bog turtle has a limited range, limited available habitat, and small populations (Thomas French, Massachusetts Division of Fisheries and Wildlife, *in litt.* 1997). There are four recorded bog turtle sites for the State; three extant and one historical. The historical population was lost when the fen was inundated after dam construction. One extant site supports a healthy bog turtle population but faces encroachment by giant reed, succession by alders, and the drying of several large channels feeding the fen (possibly due to diversion of water for agricultural purposes). Another site is threatened by residential development and by invasion of giant reed and alder (Klemens 1988). Although there are conservation agreements in place to protect the above two sites, they do not address the threats to habitat quality. In 1986, the fen at the third site was ditched and most of the water was diverted for cattle use. The water supply has subsequently been restored to the fen and the habitat partially restored. However, much of the suitable bog turtle habitat continues to be threatened by annual burning, severe overgrazing, and nutrient enrichment (Klemens 1986, 1988).

Bog turtles have been extirpated from 8 of the 17 New Jersey counties in which they occurred (Bergen, Camden, Cape May, Gloucester, Mercer, Middlesex, Passaic, and Salem). Surveys conducted in 1988 and 1989, revealed that 44 of the 75 known sites (recent and historical) had been lost due to natural succession (17 sites), wetland alteration (9 sites), and development (18 sites). In addition, bog turtles were located at only 12 of the 31 remaining sites (Zappalorti, *in litt.* 1997). By 1994, a total of at least 53 sites had been lost—33 to urban, commercial, and residential development and wetland alteration and the remainder to plant community succession and the invasion of exotic plants (Sciascia and Zappalorti 1989; Sciascia and Zappalorti, *in litt.* 1994). Many of the remaining populations are small, isolated, and threatened by development, collection, agricultural pollution, and vegetative succession (Michael Torocco, *in litt.* 1997; Zappalorti, *in litt.* 1997); these threats are exacerbated by the proximity of the sites to urban and suburban areas (e.g., Philadelphia, Camden, Trenton, and New York City). As of 1996, there were 53 known extant bog turtle sites in New Jersey (Sciascia and Zappalorti, *in litt.* 1994; Sciascia, *in litt.* 1997). Eight are considered good, 21 fair, and 18 poor, and 6 are of unknown status. Based on recent surveys, the suitability of three of these sites declined since they were originally ranked in 1993 and 1994 (Sciascia, *in litt.* 1997).

Bog turtles were reported from 17 counties in New York, but have been eliminated from 12 counties (Albany, Genessee, Onondaga, Oswego, Otsego, Rockland, Sullivan, Tompkins, Ulster, Warren, Wayne, and Westchester) (Breisch *et al., in litt.* 1994). Of New York's 24 remaining sites, only 18 populations are extant; of the 18 occupied sites, 5 are considered good, 6 fair, and 7 poor. This represents a significant reduction in range and reflects the loss of at least 33 of 57 bog turtle sites.

The bog turtle's range in New York is now limited to the Lower Hudson River and Housatonic River drainages in the southeastern corner of the State, and to one site in western New York. In western New York, six of the seven historical bog turtle sites have been lost. Two sites were eliminated due to plant community succession; one was destroyed by a sand and gravel mining operation and dumping of concrete rubble; and two were eliminated due to plant succession and hydrological alteration (due to agricultural activities at one site and construction of the Erie Canal at another) (Breisch *et al., in litt,* 1994; Collins 1990). Loss of the disjunct population in the Lake George watershed is attributed to plant succession, while the loss of the Susquehanna River drainage population was caused by the construction of an interstate highway (Breisch *et al., in litt.* 1994).

At least 26 known bog turtle sites have been lost in southeastern New York due primarily to road construction, impoundments, plant succession, and development. In addition, the historical bog turtle sites on Staten Island were eliminated by development (Nemuras 1967). In western New York, the viability of the Seneca County site is questionable, since it is threatened by collecting, plant succession and construction of an interstate highway through the wetland within 200 feet of bog turtle habitat (Breisch *et al., in litt.* 1994).

Of the remaining 24 bog turtle sites in New York, most are of poor quality. The presence of bog turtles at six sites is highly questionable since turtles have not been reported from these sites for 15 to 25 years, and habitat conditions at most of these sites have deteriorated. Most of the known extant sites are threatened by habitat loss and degradation due to residential and commercial development, road construction, and vegetative succession. The New York Natural Heritage Program recently reported that, based on additional surveys conducted since 1994, ''there are no sites in New York whose status has improved since the 1994 assessment, whereas several sites have declined'' (Novak, *in litt.* 1997). At least 99 percent of bog turtle habitat in New York occurs on private lands and all but two of the remaining populations are found in areas of high human population density. One researcher noted that even State acquisition does not necessarily ensure the protection of bog turtle habitat, as one site acquired by New York has been negatively affected by subdivisions, exotic plant species, and collection (Behler, *in litt.* 1997).

In Pennsylvania, 28 of the 71 known bog turtle occurrences are considered extirpated. Bog turtles have been extirpated from Mercer, Crawford, Delaware, and Philadelphia counties. The reasons for the loss of a disjunct population, represented by three historical locations, in the northwestern counties are unknown. However, much of the historical bog turtle habitat at Pymatuning Swamp was destroyed after a dam was constructed to create Pymatuning Lake.

In Pennsylvania, most bog turtle habitat is concentrated in the southeastern corner of the State, within portions of the Delaware and Susquehanna River drainages. Land use in southeastern Pennsylvania is primarily urban (several large cities, including Philadelphia, Harrisburg, Reading, Lancaster, and York are located there), residential, and agricultural. Agricultural areas are intensively farmed and are facing increasing threats from residential development. Development, urbanization, road construction, and agriculture are largely responsible for the loss of bog turtle habitat in southeastern Pennsylvania, and continue to pose threats to the species. Extirpation of bog turtle populations was noted by Robotham (*in* Nemuras 1967), who documented the destruction of two bog turtle sites in the West Chester-Downington area of Chester County in the early 1960s. One site was destroyed after a housing development company constructed a road through the center of the marsh and drained the marsh for development. The other site

was destroyed by a bypass road, commercial development, and excavation for a lake.

Due to prevalent habitat fragmentation, many remaining extant sites in Pennsylvania are small, isolated, and support few bog turtles; these sites are at great risk from collection, agricultural pollution, and vegetative succession (Torocco, *in litt.* 1997). Some sites are in the process of being encircled by residential developments; these developments often encroach to the very edge of delineated wetlands, and it is not unusual for lot boundaries to extend well into wetlands. Ground water withdrawal also poses a threat to some sites; a site in Berks County is threatened by a proposal to withdraw over 250,000 gallons of groundwater per day to market as spring water.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The bog turtle is a target for pet collectors due to its rarity in the wild, distinctive coloration, and small size. Take (primarily illegal) both for the national and international commercial pet trade industry has occurred for many years. Collecting is a significant factor in the species decline and is an ongoing threat to its continued existence in the wild (Anon. 1991; Earley 1993; David Flemming, U.S. Fish and Wildlife Service, *in litt.* 1991; Herman 1990; Klemens *in press*; Stearns *et al.* 1990; Tryon 1990; Tryon and Herman 1990). During the last 5 to 10 years, an increasing number of bog turtles have been advertised for sale, and prices have increased substantially. The increase in price most likely reflects the increase in demand for the turtles; the increase in demand increases the threats to the wild populations (Tryon and Herman 1990).

Atlanta Zoo personnel reported that from 1989 to early 1991, over 1000 bog turtles were exported to Japan. These figures differ significantly from CITES data and represent a significant amount of unreported illegal trade (Anon. 1991). The World Wildlife Fund recently listed bog turtles as among the world's top 10 ''most wanted'' endangered species (Earley 1993). According to Alan Salzburg, President of the American Turtle and Tortoise Society, the bog turtle is considered the most prized turtle in the United States, and when bog turtle locations become publicly known, they are exploited by collectors within 1 year (Laura Hood, Defenders of Wildlife, *in litt.* 1997).

Due to the threats facing bog turtle populations, the Society for the Study of Amphibians and Reptiles adopted a resolution calling for the prohibition of collection from wild populations (Stearns *et al.* 1990). Due to the small size of existing populations, and the low reproductive and recruitment potential of this species, the removal of even a few breeding adults can do irrevocable damage to a population (Tryon 1990). Collecting has been a factor in the reduction or extirpation of several bog turtle populations in Delaware (Anon. 1991), Maryland (Anon. 1991; Smith, *in litt.* 1994), Massachusetts (Anon. 1991), New Jersey (Farrell and Zappalorti 1989; Zappalorti, pers. comm. 1994; Zappalorti, *in litt.* 1997), New York (Breisch, *in litt.* 1993; Breisch *et al., in litt.* 1994; Collins 1990; Behler, *in litt.* 1997), and Pennsylvania (Ralph Pisapia, U.S. Fish and Wildlife Service, *in litt.* 1992; Zappalorti, *in litt.* 1997). Many sites in these States have suitable habitat, but have much-reduced bog turtle populations, probably due to collecting.

Throughout the bog turtle's entire range, States regulate take through classification of the species as endangered (in Connecticut, Delaware, Massachusetts, New Jersey, New York, Pennsylvania, and Virginia) or threatened (in Georgia, Maryland, North Carolina, South Carolina and Tennessee), yet trade continues.

Illegal trade is difficult to detect due to the questionable origin of turtles being offered for sale. Bog turtles are often ''laundered'' through States which either do not have native populations (e.g., West Virginia, Florida, California), or through States which have inadequate protection of their own bog turtle populations (Charles Bepler, U.S. Fish and Wildlife Service, *in litt.* 1993; Breisch, *in litt.* 1993; Michael Klemens, in *litt.* 1990). For example, in recent years dealers have claimed West Virginia as the State of origin for bog turtles; however, there is no evidence to support the contention that the bog turtle occurs in that State (Dennis Herman, Project Bog Turtle Coordinator, *in litt.* 1997; Tom Thorp, North Carolina Herpetological Society, *in litt.* 1997). Hatchling and juvenile turtles marketed as ''captive-born'' are usually offspring from gravid adult females illegally brought into captivity and held until they deposit eggs. The eggs are then hatched in captivity, and the captive-born (but not captive-bred) offspring are then marketed or retained (Bepler, *in litt.* 1993).

A few specific instances of illegal bog turtle collecting and trade are reported below:

(1) An undercover officer purchased eight bog turtles from a person who had collected them near Lancaster, Pennsylvania. Also, two additional bog turtles were recovered from persons who had gotten them from friends allegedly in the New York area (Bepler, *in litt.* 1993);

(2) An individual from New Jersey was arrested for bringing bog turtles from New Jersey to Florida and selling them as captive-born. It is suspected that he collected about six turtles per year over a period of several years (Bepler, *in litt.* 1993);

(3) A reliable source in New York reported that over 2000 wild-caught bog turtles were shipped to Japan in a 2-year period (Murdock, *in litt.* 1990);

(4) Researchers found several turtle traps and a much-diminished bog turtle population at an important bog turtle site in Pennsylvania (Pisapia, *in litt.* 1992);

(5) In 1993, a New Jersey resident purchased 47 bog turtles in Florida, and since 1984 had also bought 20 additional bog turtles. This individual supposedly has an active breeding program for bog turtles (Terry Tarr, U.S. Fish and Wildlife Service, *in litt.* 1993);

(6) When confronted in a New York wetland, an individual claiming to be a birdwatcher revealed the contents of the cloth bag he was carrying—a bog turtle and spotted turtle (Paul Novak, New York Natural Heritage Program, *in litt.* 1990);

(7) A reliable source reported seeing approximately 60 bog turtles at the Ohio residence of a person who frequents reptile shows. Based on the physical appearance of the bog turtles, they were not captive-bred (Scott Smith, Maryland Department of Natural Resources, *in litt.* 1996);

(8) Bog turtles have been available at the major Herpetological Expo in Orlando, Florida for the last 2 years (Herman, *in litt.* 1997; Thorp, *in litt.* 1997); and

(9) Bog turtles were observed in several Florida dealerships in 1996, although they have not been openly advertised for sale (Herman, *in litt.* 1997).

The general consensus among bog turtle researchers, nongame biologists, and law enforcement officials is that illegal collecting is occurring at a much greater rate than detected or reported (Anon. 1991; Breisch, *in litt.* 1993; Flemming, *in litt.* 1991). Bog turtles are already extremely low in numbers throughout much of their range, and any additional take could eliminate marginal populations and hamper survival and recovery efforts.

Protecting existing sites for bog turtles can pose a threat when these specific sites are revealed and publicized. In addition to the threat of collection for the pet trade industry, collection of bog

turtles for exhibition at nature centers is also a threat (Anon. 1991).

*C. Disease or Predation*

Bog turtles (particularly the eggs and young) are preyed upon by raccoons, opossums, skunks, foxes, snapping turtles, water snakes, and large birds (Herman and George 1986). Predation by raccoons appears to increase in areas with high human density, since raccoons favor fragmented areas consisting of farmland, forests, and residential development (Klemens 1989).

In some cases, predation contributes to population declines by impairing reproductive recruitment so that the population age structure is skewed toward older individuals (Zappalorti and Rocco 1993). Zappalorti (*in litt.* 1997) reported that one of his Pennsylvania study sites has undergone a dramatic population decline in the past 25 years. Although 14 different nests containing 52 eggs were located at this site, the only non-adults found during the 3-year study were an empty shell of a dead juvenile and 3 hatchlings. Also, 93 percent of the population structure was strongly skewed towards old adults, in favor of females. In monitoring the fate of 21 eggs, he documented that 6 hatched, 10 were taken by predators, 2 were broken by nesting females, and 3 failed to hatch. Predation of eggs and/or hatchlings, therefore, may play a significant role in reducing the size of the population and skewing its age structure.

Of additional concern is the recent discovery of *Mycoplasma* (the bacterium that adversely affects the desert tortoise (*Gopherus agassizii*)) at a bog turtle site in New York (Behler, *in litt.* 1997; Paul Novak, New York Natural Heritage Program, *in litt.* 1997). This disease has the potential to cause significant declines in bog turtle populations. The site where *Mycoplasma* has been discovered ''has been identified as one of the best remaining New York sites and lies in a valley with additional, extant sites leading to the possibility of spread of the disease through a significant portion of the remaining bog turtle range in New York State'' (Novak, *in litt.* 1997).

*D. The Inadequacy of Existing Regulatory Mechanisms*

Bog turtles receive some degree of protection through State listings as endangered or threatened species, and take from the wild within all range States requires a valid permit.

In Connecticut, the bog turtle is listed as endangered and the take of endangered species is prohibited. Regulations require that any person owning or possessing a bog turtle must register with the Wildlife Bureau of the Department of Environmental Protection. There are no special provisions for the protection of species of special concern under Connecticut's wetland laws and regulations and only about 10 percent of the wetland permits issued by townships are checked for species of special concern (Doug Cooper, Connecticut Department of Environmental Protection, pers. comm. 1994).

In Delaware, the bog turtle is listed as endangered and, except under permit, it is unlawful to import, transport, possess, or sell this species. Currently, there is no regulatory mechanism to protect wetland habitat, since Delaware's wetland laws only address tidal wetlands.

In Maryland, the bog turtle was listed as endangered in 1972 when bog turtle populations were extant at only 5 of the 23 then known historical occurrence locations. However, it was removed from the State endangered species list in 1982 after 173 new occurrence locations were discovered during surveys conducted between 1976 and 1978 (Smith 1994, Taylor *et al.* 1984). In 1992 and 1993, the Maryland Department of Natural Resources conducted follow-up surveys of the 178 occurrence locations documented by Taylor *et al.* (1984) to support bog turtles. Of the 159 occurrence locations surveyed, bog turtles were found at 91 occurrence locations; this represents a 43 percent reduction of bog turtle occurrence locations over a 15-year period (Smith 1994). Based on the results of these surveys, bog turtles are now classified as threatened in Maryland. Bog turtles also receive additional protection under the State's Reptile and Amphibian Possession and Permit Regulations which regulate the possession, breeding, sale, and trade of certain native reptiles and amphibians. Under these regulations, it is illegal to take bog turtles from the wild or to breed them in captivity. In addition, the regulations prohibit the possession, sale, offering for sale, trade, or barter of any turtle with a carapace length less than 4 inches (which applies to most bog turtles due to their small size).

A portion of bog turtle habitat in Maryland receives some degree of protection under the Nontidal Wetlands Protection Act. Habitat in agricultural areas receives little or no protection due to the Act's exemption of agricultural activities from permit requirements.

In Massachusetts, the species is classified as endangered, and it is unlawful to take or possess bog turtles without a permit. Currently no person in the State has a valid permit to possess bog turtles (Tom French, Massachusetts Department of Fisheries and Wildlife, pers. comm. 1994). Its habitat receives some degree of protection under the Massachusetts Wetlands Protection Act which prohibits permitted projects from having an adverse effect on wetland habitat that supports endangered and threatened species or species of special concern. This law also allows for a 100-foot buffer zone around such wetlands when activities in the buffer zone could result in the alteration of adjacent wetlands (Melvin and Roble 1990).

In New Jersey, the bog turtle is listed as endangered. It is unlawful to take, possess, transport, export, process, sell, offer for sale, or ship bog turtles without a permit. Bog turtle habitat receives some protection under the Exceptional Resource Value Wetland provision of New Jersey's Freshwater Wetland Protection Act. This law allows for a 150-foot buffer zone around wetlands, includes a stringent permit review process, and prohibits activities that would likely jeopardize or destroy bog turtles habitat (Torok, pers. comm., 1994). Many agricultural activities are exempt from these regulations.

In New York, the bog turtle has been listed as endangered since 1971, and the animal and its parts (including eggs) are protected from unauthorized take, import, transport, possession, or sale. Wetlands occupied by an endangered or threatened species are considered Class 1 Wetlands, which receive some added protection from filling and excavation. Certain activities, such as draining of wetlands for agriculture, are exempted from permitting requirements as long as no excavations are required to accomplish the draining.

In Pennsylvania, the bog turtle is listed as endangered. It is illegal to catch, take, kill, possess, import, export, sell, offer for sale, or purchase any individual of this species, alive or dead, or any part thereof, without a special permit. Bog turtle habitat receives some degree of protection under State wetland regulations which categorize wetlands that serve as habitat for endangered or threatened flora or fauna as ''exceptional value wetlands.'' Issuance of permits to alter such wetlands is contingent upon meeting specific requirements.

Section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) (CWA) regulates the discharge of dredged or fill material into the waters of the United States. The phrase ''waters of the United States'' reaches to the farthest extent permissible under the Commerce Clause

and includes rivers, lakes, streams, ponds and wetlands. It does not include prior converted cropland. The U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) are responsible for administering section 404. The Corps is responsible for program administration; the EPA has an important oversight role. Section 404 requires that project proponents obtain a CWA section 404 permit from the Corps before undertaking activities in waters of the United States involving a discharge of dredged or fill material. These regulatory agencies are also required to consult with the Service and State resource agencies regarding potential impacts of these projects on fish and wildlife.

The Corps authorizes projects involving the discharge of dredged or fill material into waters of the United States using either individual permits or general permits. Individual permits are carefully evaluated through the Corps' public interest review and its analysis of compliance with the EPA's 404(b)(1) guidelines. The EPA's 404(b)(1) guidelines require a rigorous examination of the availability of practicable alternatives, and prohibit the authorization of any project that would result in significant adverse impacts, among other requirements. General permits are issued for activities which are similar in nature and which result in no more than minimal environmental effects on a single project and cumulative adverse impact basis. General permits also take several forms, including nationwide permits, which are available for the entire country, and State Programmatic General Permits, which are linked to State wetland regulatory programs, and which attempt to integrate State and Federal programs for authorizing minor impact activities. The purposes of all general permits are to provide workload relief for the Corps for projects which should not require a lot of analysis and to provide some measure of relief for the public for activities which are similar in nature and result in only minor impacts.

The regulatory relief and expedited permit review associated with general permit authorization is based on a one-time only determination that the general permit itself will meet the 404(b)(1) guidelines and thus would not allow authorization of projects with more than minimal impacts. Following adoption of a general permit, projects which fit the terms and conditions of the general permit are authorized with little scrutiny. Some require that the applicant notify the Corps before using the permit; others do not require any notification as long as they meet the permit conditions.

The Corps currently utilizes 39 nationwide permits, including Nationwide Permit 26, which addresses the discharge of dredged or fill material for any purpose in isolated waters or headwaters. Nationwide Permit 26, until 1996, was available for use for projects up to 10 acres. It has now been modified for use for fills of up to no more than 3 acres. When the fill activity is larger than ⅓ acre, the permit applicant must notify the Corps prior to permit use. For projects less than ⅓ acre, the permittee must submit a report within 30 days to the Corps providing basic information about the permit's use. The Corps plans to phase out Nationwide Permit 26 as there is a high likelihood that the permit has resulted in more than minimal single project and cumulative adverse impacts. In its place, however, will be an additional unknown number of nationwide permits which will be designed for activities which are similar in nature. The potential adverse impacts of these additional nationwide permits are unknown at this time.

The Corps can take discretionary authority and require an applicant to undergo a full individual permit process, if the Corps believes that the resource issues are significant, and if the Corps believes that the project requires additional consideration. For workload management reasons, this authority is not invoked frequently.

Many of the States in the Northeast have eliminated many or most of the nationwide permits and replaced them with a single programmatic general permit which combines the State and Federal programs and sets thresholds and conditions for its use tailored to the aquatic resources and threats to those resources in their areas of jurisdiction.

The bog turtle could potentially be affected by projects requiring 404 permits, especially projects which would appear to meet the terms and conditions of nationwide permits such as Nationwide Permit 26. The Corps is planning to initiate a programmatic consultation on the impacts of nationwide permits on endangered species, and it is our expectation that listed species will receive adequate consideration following completion of the consultation process. However, under the CWA section 404 program, destruction of bog turtle habitat continues to be authorized.

Furthermore, the bog turtle is affected by agricultural practices which are entirely exempt from regulation under section 404. Such activities take place without Corps or EPA oversight or review. In addition to an agricultural exemption for maintenance of existing agricultural drainage systems, other exempted activities include plowing, planting and harvesting in existing cropped wetlands, and construction or maintenance of farm roads and stock ponds as long as the activity is part of an ongoing farming operation.

On July 1, 1975, the bog turtle was added to Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and on June 11, 1992 (57 FR 20443), it was transferred from Appendix II to Appendix I. Both import and export permits are required from the importing and exporting countries before an Appendix I species can be transported, and an Appendix I species can not be exported for primarily commercial purposes. These CITES permits are not issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired.

*E. Other Natural or Manmade Factors Affecting its Continued Existence*

Plant community succession and the invasion of wetland systems by exotic plant species have also contributed to the decline of the bog turtle (Behler, *in litt.* 1997; Zappalorti, *in litt.* 1997). Unless set back by fire, beaver activity, light to moderate grazing, or periodic wet years, some bog turtle habitats succeed into wooded swampland and become unsuitable for the species. Various human activities, such as fire suppression, beaver control, fertilizer and sediment runoff, and wetland draining, ditching and filling accelerate both natural succession and the invasion of exotic plants (Gelvin-Innvaer and Stetzar 1992, Klemens 1984).

Development and agriculture adjacent to bog turtle habitat can result in soil disturbance and increases in the nutrient and sediment load, thus allowing for the invasion of exotic species such as multiflora rose (*Rosa multiflora*), purple loosestrife (*Lithrum salicaria*), giant reed (*Phragmites australis*), and reed canary grass (*Phalaris arundinacea*), as well as native species such as red maple and alder (Klemens 1984, 1989, and *in press*).

Beavers pose a threat to those bog turtle populations that are isolated and/or occur within the only remaining suitable habitat within a watershed. Smith (*in litt.* 1994) reported that flooding caused by beavers now poses a threat to three bog turtle populations in Maryland.

Thick deposits of iron bacteria, suggesting possible contamination from pollutants, have been found at three bog

turtle sites in Maryland. Reptile and amphibian populations at these sites are much smaller in size than one would expect based on the habitat characteristics (Smith, *in litt.* 1994). Wetland habitats are also vulnerable to pollutants (oil and grease) carried by storm water runoff. Farrell and Zappalorti (1989) reported that one New Jersey wetland occupied by bog turtles was degraded by trash and motor oil that was carried through a storm drain.

The bog turtle is also vulnerable to local extirpation and range-wide reduction due to—(1) the small size of many populations; (2) the isolation of existing populations; (3) the delay in reaching sexual maturity; (4) low juvenile recruitment rates; and (5) relatively low mobility and small home ranges (Arndt 1977, Chase *et al.* 1989). Isolation of populations prevents gene flow which can result in an inbred population with low fecundity. Further, isolation and habitat fragmentation prevent recolonization of existing habitat or expansion and colonization into newly created habitats.

Vehicles and livestock pose a direct threat to bog turtles because they can kill and injure individuals. Roads near occupied bog turtle sites contribute significantly to mortality as is evidenced by the number of dead turtles found along roadsides. Roads that are adjacent to or within wetlands pose the greatest threat to bog turtles (Arndt 1977). Because livestock can trample bog turtles, a large number of livestock within a wetland can pose a threat to the turtle population (M. Klemens, pers. comm. 1994; S. Smith, pers. comm. 1994).

The Tortoise and Freshwater Turtle Specialist Group of the IUCN recently evaluated the status of the bog turtle. Based on the species' precipitous decline and threats to its continued existence, the bog turtle was included as an endangered species on their 1996 IUCN Red List (Behler, *in litt.* 1997).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present and future threats faced by the species in determining to make this rule final. Based on this evaluation, the preferred action is to list the northern population of the bog turtle as threatened, and the southern population as threatened due to similarity of appearance. In spite of existing State protective regulations, the northern population has declined by approximately 50 percent (primarily over the past 20 years) and has experienced a significant decrease in its known range. Currently, less than 200 extant sites remain in the north, and only 33 of these sites are likely to be able to support viable bog turtle populations over the long term. Most of the extant sites consist of small wetlands isolated from one another and often in close proximity to human habitation. Although the northern population of the bog turtle faces serious ongoing and potential threats, it is not currently in imminent danger of extinction. The northern population is, however, likely to become endangered throughout all or a significant portion of its range in the foreseeable future; therefore, classification of the northern population of the bog turtle as threatened is appropriate. Critical habitat is not being designated for the reasons described below.

Although final listing determinations are usually not effective until 30 days after their publication in the **Federal Register**, such a delay would pose an additional, unacceptable risk to the bog turtle. Several persons and State agencies have expressed a concern about the heightened risk of illegal collection due to the proposed listing, and requested that the final listing be implemented as soon as possible to reduce this risk. One of the peer reviewers of the proposed rule noted that he had ''received reliable reports of increased interest in the location of bog turtle sites by well-known collectors. There is a heightened threat of take right now as collectors are stockpiling bog turtles in anticipation of a federal listing.'' Therefore, due to the significant ongoing threats of illegal collection and trade, the Service has determined that the bog turtle will receive full protection under the Act effective upon publication of this rule in the **Federal Register**.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer required.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat for the bog turtle is not prudent. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist, (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

Listing of the bog turtle as threatened elevates the awareness of the rarity of the species, thereby increasing the likelihood of take by private and commercial collectors. The listing could lead to increased illegal take and the risk of eggs being accidentally destroyed by collectors searching for adult turtles. The publication of precise maps and descriptions of critical habitat in the **Federal Register** would increase the vulnerability of the bog turtle to the threats of collection and accidental destruction of its eggs.

Designation of critical habitat could also increase the vulnerability of bog turtle habitat to intentional destruction by landowners who do not want a protected species on their property. Tryon and Herman (1990) report that on more than one occasion, landowners, fearing involvement from State or Federal authorities, have drained (ditched) bog turtle habitat after researchers visited the site.

Furthermore, designation of critical habitat for the bog turtle would provide little or no benefit to the species or its habitat. Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. Critical habitat designation serves as notification to Federal agencies of the habitats which are essential for the conservation of the species; the Act requires Federal agencies to ensure that their actions do not result in destruction or adverse modification of critical habitat. The Service believes that notification to Federal agencies of the habitats which are essential for the conservation of the species can be accomplished informally through periodic coordination meetings, project-specific meetings, and other contacts; the Service believes that notification through these means ensures that other Federal agencies receive the most recent and reliable information concerning habitats

important for the conservation of the species. In addition, the Service believes that, because the ''jeopardy'' and ''adverse modification'' standards are similar, any project which would cause destruction or adverse modification of critical habitat would also jeopardize the continued existence of the species. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species are extremely rare.

Because any benefit potentially provided by designation of critical habitat for the bog turtle would be outweighed by the increase in threats to the species and its habitat from illegal collecting and vandalism caused by such designation, the Service has determined that designation of critical habitat is not prudent. Protection of bog turtle habitat will be addressed through the section 7 consultation process and through recovery actions.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery action, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any species listed as endangered or threatened, or destroy or adversely modify its critical habitat. If a Federal action could affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions that may require consultation as described in the preceding paragraph include—Corps involvement in projects such as the construction of roads and bridges; Corps permitting of wetland filling and dredging projects subject to section 404 of the CWA and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*); Natural Resources Conservation Service projects; EPA authorization of discharges under the National Pollutant Discharge Elimination System; and U.S. Housing and Urban Development projects. In addition, Federal involvement under section 7 would be expected for management and other land use activities on Federal lands with bog turtle populations.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service (59 FR 34272; July 1, 1994) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service believes, based on the best available information, that the following actions will not result in a violation of section 9:

(1) Transferring individual turtles from roads to immediately adjacent habitat;

(2) Light to moderate livestock grazing that prevents or minimizes the encroachment of invasive native and exotic plant species;

(3) Possession of bog turtles legally acquired prior to the effective date of this rule and consistent with 50 CFR 17.4; and

(4) Actions that may affect bog turtles and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with section 7 of the Act.

With respect to both the northern and southern populations of the bog turtle, the following actions would be considered a violation of section 9:

(1) Take of bog turtles without a permit (this includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions). However, with respect solely to the southern population, incidental take (see special rule below) would not be considered a violation of section 9;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken bog turtles:

(3) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section) without prior obtaining a threatened species, similarity of appearance, or CITES permit.

With respect solely to the northern population, activities that the Service believes could result in the take of bog turtles include, but are not limited to:

(1) Destruction or alteration of the species' habitat by activities that include, but are not limited to, draining, ditching, discharging fill material, excavation, impoundment, or water diversion, except as outlined in (4) above;

(2) Destruction or degradation of wetland vegetation used by the turtles for nesting, basking, foraging, or cover; and

(3) Discharging or dumping of toxic chemicals or other pollutants into wetlands occupied by the species.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the appropriate Service Field Office as follows: in Pennsylvania, the Pennsylvania Field Office, 315 S. Allen Street, Suite 322, State College, PA 16801 (814/234–4090); in Maryland and Delaware, the Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401 (410/224–2732); in New York, the New York Field Office, 3817 Luker Road, Cortland, NY 13045 (607/758–9334); in Massachusetts and Connecticut, the New England Field Office, 22 Bridge Street, Concord, NH 03301–4986 (603/225–1411); and, in New Jersey, the New Jersey Field Office, 927 North Main Street, Building D1, Pleasantville, NJ 08232 (609/747–0620). Requests for copies of the regulations

regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 (telephone 413/253–8200; facsimile 413/253–8482).

**Similarity of Appearance**

Section 4(e) of the Act authorizes the treatment of a species (subspecies or population segment) as endangered or threatened even though it is not otherwise listed as endangered or threatened if—(a) the species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (3) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

There are only slight morphological differences in this species throughout its range (Amato *et al.* 1993; Nemuras 1967), making it extremely difficult to differentiate the location from where bog turtles are taken. Presently, the origin and legality of a specimen (specific wetland, locality, or State) cannot be determined. This poses a problem for Federal and State law enforcement agents trying to stem illegal trade in the threatened northern population. The listing of the southern population as threatened due to similarity of appearance eliminates the ability of commercial collectors to commingle northern bog turtles with southern ones or to misrepresent them as southern bog turtles for commercial purposes. For these reasons, the Service is listing the southern population (occurring in the States of Georgia, North Carolina, South Carolina, Tennessee and Virginia) as threatened due to similarity of appearance to the northern population.

The special rule exempts incidental take of the southern population of bog turtles. Incidental take is take that results from, but is not the purpose of, carrying out an otherwise lawful activity. For example, legal application of pesticides and fertilizers, livestock grazing and other farming activities, mowing, burning, water diversion, and any other legally undertaken actions that result in the accidental take of a bog turtle will not be considered a violation of section 9 of the Act in the States of Georgia, North Carolina, South Carolina, Tennessee, and Virginia. The Service believes that listing the southern population under the similarity of appearance provision of the Act, coupled with the special rule, minimizes enforcement problems and helps to conserve the northern population. It is the intent of the special rule to treat bog turtles from the southern population in the same way as the threatened northern population with regard to permit requirements for pre-Act wildlife (50 CFR 17.4).

The Service believes that the provision to allow incidental take for the southern population (i.e., for land alteration activities in Georgia, North Carolina, South Carolina, Tennessee, and Virginia) will not pose a threat to the northern population because—(1) the two populations are sufficiently separate that incidental take of southern specimens will not inadvertently be applicable to members of the northern population, and (2) the primary threat to the northern population from activities involving the southern population stem from commingling of specimens in commercial trade.

**National Environmental Policy Act**

The Service has determined that Environmental Assessments and Environmental Impact Statements, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Pennsylvania Field Office (see **ADDRESSES** section).

**Author**

The primary author of this document is Carole K. Copeyon (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under ''Reptiles,'' to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| REPTILES | | | | | | | |
| * | * | * | * | * | * | | * |
| Turtle, bog (=Muhlenberg). | *Clemmys muhlenbergii.* | U.S.A. (CT, DE, GA, MD, MA, NC, NJ, NY, PA, SC, TN, VA). | Entire, except GA, NC, SC, TN, VA. | T | 626 | NA | NA |
| Do | .....do | .....do | U.S.A. (GA, NC, SC, TN, VA). | T(S/A) | | NA | 17.42(f) |
| * | * | * | * | * | * | | * |

3. Amend section 17.42 by adding paragraph (f) as follows:

**§ 17.42 Special rules—reptiles.**

* * * * *

(f) Bog turtle (*Clemmys muhlenbergii*), southern population—(1) *Definitions of*

*terms.* For the purposes of this paragraph (f): *Bog turtle* of the southern population means any member of the species *Clemmys muhlenbergii,* within Georgia, North Carolina, South Carolina, Tennessee and Virginia, regardless of whether in the wild or captivity, and also applies to the progeny of any such turtle.

(2) *Prohibitions.* Except as provided in paragraph (f)(3) of this section, the provisions of Sec. 17.31 (a) and (b) of this part applies to bog turtles of the southern population (see also 50 CFR part 23).

(3) *Take.* Incidental take, that is, take that results from, but is not the purpose of, carrying out an otherwise lawful activity, does not apply to bog turtles of the southern population.

Dated: October 23, 1997.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 97–29088 Filed 11–3–97; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 961126334–7025–02; I.D. 102997B]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area in the Gulf of Alaska (GOA). NMFS is requiring that catches of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish 1997 total allowable catch (TAC) assigned to trawl gear in the Central Regulatory Area of the GOA has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 30, 1997, until 2400 hrs, A.l.t., December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Thomas Pearson, 907–486–6919.

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

The allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 1,282 metric tons (mt). (See § 679.20(a)(4)(ii)(B).)

In accordance with § 679.20 (d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, the Regional Administrator is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area be treated as prohibited species in accordance with § 679.21 (b).

#### Classification

This action responds to the best available information from the fishery. It must be implemented immediately to prevent overharvesting the 1997 TAC for sablefish assigned to trawl gear in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to public interest. The trawl fleet will soon take the assigned TAC for sablefish. Further delay would only result in overharvest and disrupt the FMP's objective of limiting the harvest of sablefish by vessels using trawl gear. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: October 29, 1997.

**Bruce C. Morehead,**

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

[FR Doc. 97–29158 Filed 10–30–97; 3:36 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 62, No. 213
Tuesday, November 4, 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.

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 3, 32, and 33

### Trade Options on the Enumerated Agricultural Commodities

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Generally, the offer or sale of commodity options is prohibited except on designated contract markets. One of several specified exceptions to the general prohibition on off-exchange options is for ''trade options.'' Trade options are defined as off-exchange options ''offered by a person having a reasonable basis to believe that the option is offered to'' a person or entity within the categories of commercial users specified in the rule, where such commercial user ''is offered or enters into the transaction solely for purposes related to its business as such.'' Trade options, however, are not permitted on the agricultural commodities which are enumerated in the Commodity Exchange Act (Act).

The Commodity Futures Trading Commission (Commission or CFTC) is proposing to remove the prohibition on off-exchange trade options on the enumerated agricultural commodities pursuant to a three-year pilot program. The Commission is proposing initially to permit agricultural trade options which, if exercised, will result in delivery of the commodity and which may not be resold, repurchased, or otherwise cancelled other than through the exercise or natural expiration of the contract. The Commission is also proposing to permit only those entities which handle the commodity in normal cash market channels to offer to buy or sell such options. Such entities, in order to sell agricultural trade options (puts and calls), would be required to become registered as agricultural trade option merchants, to report to the Commission on their transactions, to provide their customers with disclosure statements, and to safeguard their customers' premiums. The Commission is also proposing to exempt from the prohibition and these proposed rules individuals or entities which meet a substantial financial requirement. Finally, the Commission is proposing to remove the prohibition on the offer or sale of exchange-traded options on physicals on these commodities.

**DATES:** Comments must be received by December 4, 1997.

**ADDRESSES:** Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to ''Agricultural Trade Options.''

**FOR FURTHER INFORMATION CONTACT:** Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or transmitted electronically at [PArchitzel@cftc.gov].

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. The Prohibition of Agricultural Trade Options*

In 1936, responding to a history of large price movements and disruptions in the futures markets attributed to speculative trading in options, Congress completely prohibited the offer or sale of option contracts both on and off exchange in all commodities then under regulation.[1] Over the years, this statutory bar continued to apply only to the commodities originally regulated under the 1936 Act. The specific agricultural commodities originally regulated under the 1936 Act included, among others, grains, cotton, butter, eggs, and potatoes. Later, fats and oils, soybeans and livestock, as well as others, were added to the list of enumerated agricultural commodities. Any commodity not so enumerated, whether agricultural or not, was not subject to regulation. Thus, options on such nonenumerated commodities were unaffected by the prohibition.[2]

A history of abusive practices and fraud in the offer and sale of off-exchange options in the nonenumerated commodities was one of the catalysts leading to enactment of the Commodity Futures Trading Commission Act of 1974 (1974 Act), which substantially strengthened the Commodity Exchange Act and broadened its scope by bringing all commodities under regulation for the first time.[3] Under the 1974 amendments, the newly-created CFTC was vested with plenary authority to regulate the offer and sale of commodity options on the previously unregulated, nonenumerated commodities.[4] The Act's statutory prohibition on the offer and sale of options on the enumerated agricultural commodities was retained.

Shortly after its creation, the Commission promulgated a comprehensive regulatory framework applicable to off-exchange commodity option transactions in the

[1] Commodity Exchange Act of 1936, Pub. L. No. 74–675, 49 Stat. 1491 (1936). *See,* H. Rep. No. 421, 74th Cong., 1st Sess. 1, 2 (1934); H. Rep. No. 1551, 72d Cong., 1st Sess. 3 (1932).

[2] Examples of nonenumerated commodities would include coffee, sugar, gold, and foreign currencies. Before 1974, the Act covered only those commodities enumerated by name. The 1936 Act regulated transactions in wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghum, mill feeds, butter, eggs, and Solanum tuberosum (Irish potatoes). Act of June 15, 1936, Pub. L. 74–675, 49 Stat. 1491 (1936). Subsequent amendments to the Act added additional agricultural commodities to the list of enumerated commodities. Wool tops were added in 1938. Commodity Exchange Act Amendment of 1938, Pub. L. 471, 52 Stat. 205 (1938). Fats and oils, cottonseed meal, cottonseed, peanuts, soybeans, and soybean meal were added in 1940. Commodity Exchange Act Amendment of 1940, Pub. L. 818, 54 Stat. 1059 (1940). Livestock, livestock products, and frozen concentrated orange juice were added in 1968. Commodity Exchange Act Amendment of 1968, Pub. L. 90–258, 82 Stat. 26 (1968) (livestock and livestock products); Act of July 23, 1968, Pub. L. 90–418, 82 Stat. 413 (1968) (frozen concentrated orange juice). Trading in onion futures on United States exchanges was prohibited in 1958. Commodity Exchange Act Amendment of 1958, Pub. L. 85–839, 72 Stat. 1013 (1958).

[3] Congress accomplished this by adding to the list of enumerated commodities an expansive catch-all definition of ''commodity'' which included all ''services, rights, or interests in which contracts for future delivery are presently or in the future dealt in.'' The definition of commodity is currently codified in section 1a(3) of the Act.

[4] Section 4c(b) of the Act provides that no person ''shall offer to enter into, or confirm the execution of, any transaction involving any commodity regulated under this Act'' which is in the nature of an option ''contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.'' 7 U.S.C. 6c(b).

nonenumerated commodities.[5] This comprehensive framework exempted ''trade options'' from most of its provisions except for a rule prohibiting fraud (rule 32.9).[6] In contrast, commodity options on the enumerated commodities—the domestic agricultural commodities listed in the Act—were prohibited both as a consequence of the continuing statutory bar as well as Commission rule 32.2, 17 CFR 32.2. This prohibition made no exceptions and applied equally to trade options.

The attempt to create a regulatory framework to govern the offer and sale of off-exchange commodity options was unsuccessful. Because of continuing, persistent, and widespread abuse and fraud in their offer and sale, the Commission in 1978 suspended all trading in commodity options, except for trade options.[7] Congress later codified the Commission's options ban, establishing a general prohibition against commodity option transactions other than trade and dealer options.[8]

The Commission subsequently permitted the introduction of exchange-traded options on the nonenumerated commodities by means of a three-year pilot program.[9] Based on that successful experience, Congress, in the Futures Trading Act of 1982, eliminated the statutory bar to transactions in options on the enumerated commodities, permitting the Commission to establish a similar pilot program to reintroduce exchange-traded options on those agricultural commodities.[10] When establishing the pilot program, the Commission declined to relax the prohibition on off-exchange trade options on these commodities.[11]

The Commission has reconsidered the issue of whether to remove the prohibition on the offer and sale of trade options on the enumerated commodities several times.[12] On December 19, 1995, the Commission hosted a public roundtable (December Roundtable) to consider this issue once again and to provide a forum for members of the public to provide their views. Subsequently, the Commission instructed the staff to study this issue and to forward its analysis to the Commission.

### *B. The Advance Notice of Proposed Rulemaking*

On June 9, 1997, the Commission published an advance notice of proposed rulemaking (advance notice) in the **Federal Register** seeking comment on whether it should propose rules to lift the prohibition on trade options on the enumerated agricultural options subject to conditions and, if so, what conditions would be appropriate (62 FR 31375). The Commission based the advance notice on a study by the Commission's Division of Economic Analysis (Division).[13]

The advance notice discussed the potential benefits and risks that may result from lifting the prohibition on agricultural trade options. The benefits include greater customization, a known cost of the instrument at the outset, and an increase in possible types of vendors, permitting greater convenience and more flexible financing arrangements. The risks identified in the study include fraud, credit risk, liquidity risk, operational risk, systemic risk, and legal risk.

In addition, the advance notice offered a variety of regulatory protections or conditions which could be used to address many of the risks identified in the study. Those conditions included possible restrictions on the parties permitted to enter into these transactions, restrictions on the instruments or their use, and/or regulation of their marketing. The advance notice noted that several of the risks could be reduced by imposing eligibility limitations, such as to restrict the availability of agricultural trade options to sophisticated individuals or entities; to require that those marketing these instruments be registered with, or identify themselves to, the Commission or be commercial users themselves; and/or to impose an education requirement on either buyers or agricultural trade option vendors or both.

The advance notice also discussed possible restrictions on the types of options permitted as a possible means of ensuring that commercials enter into such transactions ''solely for purposes related to (their) business as such.'' Moreover, the possible regulation of marketing, including disclosure requirements and account confirmation requirements, was considered. Additional issues addressed by the advance notice included possible requirements for cover or other methods for limiting the risk of possible default and requirements regarding the establishment of appropriate internal controls. In order to focus comment on these issues, the advance notice invited commenters to respond to 30 specific questions relating to the above topics.

## II. Comments Received

In response to its request for public comment, the Commission received a total of 76 comment letters from 82 commenters. The commenters were almost evenly divided with 35 commenters in favor and 36 opposed to lifting the ban.[14] Those favoring lifting the prohibition on agricultural trade options included a futures exchange (with qualifications); a futures industry association; a derivatives industry association; five risk management firms; a commodity trading advisor; a bank; six agriculture-related businesses; 15 trade and farm associations, including both

[5] 17 CFR part 32. *See*, 41 FR 51808 (Nov. 24, 1976) (Adoption of Rules Concerning Regulation and Fraud in Connection with Commodity Option Transactions). *See also*, 41 FR 7774 (February 20, 1976) (Notice of Proposed Rules on Regulation of Commodity Option Transactions); 41 FR 44560 (October 8, 1976) (Notice of Proposed Regulation of Commodity Options).

[6] As noted above, trade options are defined as off-exchange options ''offered by a person having a reasonable basis to believe that the option is offered to the categories of commercial users specified in the rule, where such commercial user is offered or enters into the transaction solely for purposes related to its business as such.'' *Id*. at 51815; rule 32.4(a) (1976). This exemption was promulgated based upon an understanding that commercial users of the underlying commodity had sufficient information concerning commodity markets insofar as transactions related to their business as such, so that application of the full range of regulatory requirements was unnecessary for business-related transactions in options on the nonenumerated commodities. *See*, 41 FR 44563, ''Report of the Advisory Committee on Definition and Regulation of Market Instruments,'' appendix A–4, p. 7 (January 22, 1976).

[7] 43 FR 16153 (April 17, 1978). Subsequently, the Commission also exempted dealer options from the general suspension of transactions in commodity options. 43 FR 23704 (June 1, 1978).

[8] Pub. L. No. 95–405, 92 Stat. 865 (1978). Pursuant to the 1978 statutory amendments, option transactions prohibited by new section 4c(c) could not be lawfully effected until the Commission transmitted to its congressional oversight committees documentation of its ability to regulate successfully such transactions, including its proposed regulations, and 30 calendar days of continuous session of Congress after such transmittal had passed.

[9] 46 FR 54500 (November 3, 1981).

[10] Pub.L. No. 97–444, 96 Stat. 2294, 2301 (1983).

[11] Although the Commission noted that ''there may be possible benefits to commercials and to producers from the trading of these 'trade' options in domestic agricultural commodities,'' it determined that ''in light of the lack of recent experience with agricultural options and because the trading of exchange-traded options is subject to more comprehensive oversight,'' ''proceeding in a gradual fashion by initially permitting only exchange-traded agricultural options'' was the prudent course. 48 FR 46797, 46800 (October 14, 1983).

[12] For example, in 1991 the Commission proposed deleting the prohibition on trade options on the enumerated commodities and including them under the same exemption applicable to all other commodities. 56 FR 43560 (September 3, 1991). The Commission never promulgated the proposed deletion as a final rule.

[13] The complete text of that study, entitled ''Policy Alternatives Relating to Agricultural Trade Options and Other Agricultural Risk-Shifting Contracts,'' was forwarded to the Commission by the Division on May 14, 1997. It is available through the Commission's Internet site at http://www.cftc.gov/ag8.htm.

[14] Five letters offered commentary on the issue without taking a position on the overall wisdom of lifting the prohibition.

national organizations and state-level affiliates; three individuals; and an accounting firm. Those opposed included two futures exchanges; a futures industry trade association; ten futures professionals; two producer associations; a grower-owned marketing cooperative; a country elevator; an academician; and 18 individuals, eight of whom were producers.

Commenters opposed to lifting the ban generally expressed the view that existing exchange-traded products are adequate to manage agricultural risk and that agricultural trade options are likely merely to replicate those existing products but in a less safe environment. In this regard, the commenters stressed the higher likelihood of fraud occasioned by the unsophisticated nature of the possible counterparties to agricultural trade option transactions, the decentralized nature of the market, and the lack of regulatory oversight of possible agricultural trade option vendors. Several commenters also opined that, as a result of operating in a less regulated environment, agricultural trade options would enjoy an unfair competitive advantage over exchange-traded instruments, thereby adversely affecting exchange liquidity. Others expressed the concern that problems arising as a consequence of the less regulated environment for the trading of agricultural trade options could damage public confidence in all risk management products, including exchange-traded instruments. A final concern expressed by several commenters was that lifting the prohibition on agricultural trade options will advantage larger, more sophisticated agricultural companies over smaller, independent businesses, hastening a trend toward greater consolidation and concentration in agricultural markets.

Those commenters favoring lifting the prohibition on agricultural trade options generally expressed the view that recent developments in domestic and foreign agricultural markets have increased the need for agricultural trade options. In particular, several commenters noted that agricultural trade options already are being offered outside of the United States to the competitive advantage of foreign producers and agricultural businesses.

Other commenters noted that the recent removal of many of the long-standing government support programs may result in increased price uncertainty and volatility, thereby increasing the need for a variety of risk-management and marketing tools. In this regard, the Division staff in its study noted that the overall impact of the Federal Agricultural Improvement and Reform Act of 1996 likely will be to leave farm incomes more exposed to changes in market prices and that in response to these changes ''new risk management tools are being developed, a trend which is likely to continue.'' [15]

The greater interest by some segments of the agricultural sector in managing risks that was noted in the Division's study is also reflected in many of the comments. Several commenters who favor lifting the ban generally noted that the increasing size and complexity of producers' operations also have given rise to the need for more innovative and flexible risk management products. For example, one commenter noted that:

> All facets of agricultural production whether grain, cotton, fruits, vegetables or livestock are becoming more specialized and targeted toward niche markets. Producing for these markets often requires a greater degree of coordination and long-term commitment between the producer and processor. Having the flexibility to write marketing contracts that are now banned would be of great benefit in facilitating the coordination required.

These rapid and profound changes taking place in these markets are a key factor in the Commission's determination to propose these rules.[16]

In addition to the written comments, the Commission received oral comments during two public field meetings at which members of the public had an opportunity to address the Commission and to answer its questions regarding these issues. One of the meetings was held in Bloomington, IL, and the other was held in Memphis, TN. A third informational meeting was held in conjunction with a general membership meeting of the National Cattlemen's Beef Association. Transcripts of the proceedings at all three events were included in the Commission's comment file and are available through the Commission's internet web site. Generally, the participants in these meetings reflected the range of views expressed in the written comments and were likewise equally divided in their support or opposition to lifting the prohibition on agricultural trade options.

## III. The Proposed Rules

### *A. Three-Year Pilot Program*

Based upon the analysis in the Division's study and the comments filed in response to the advance notice, including the comments presented to the Commission during its field meetings, the Commission is proposing to promulgate rules establishing a pilot program to permit the offer and sale of trade options subject to a number of strict regulatory conditions. Many commenters expressed the view that the potential risk of permitting trade options clearly outweighed any benefit which they might provide. These commenters, however, typically assumed that agricultural trade options would be offered under the same level of regulation currently applicable to other trade options.[17] An approximately equal number of commenters expressed the view that the prohibition on trade options should be lifted, particularly in response to the new challenges agriculture faces as a result of changes in government programs. Nevertheless, the vast majority of commenters, both those favoring and opposing lifting the prohibition of agricultural trade options, urged caution.

The Commission successfully permitted the reintroduction of exchange-traded options under a three-year pilot program after their nearly half-century ban. *See*, 46 FR 54500 (November 13, 1981). Many at that time expressed concerns similar to those expressed in connection with the Commission's consideration of lifting the prohibition on agricultural trade options. The Commission determined that a pilot program best addressed those concerns, permitting the introduction of exchange-traded options subject to strict regulatory controls. By structuring its action as a pilot program, the Commission was able to test the efficacy of its regulations and to adjust them as experience warranted. The use of a pilot program proved to be a highly successful means of reintroducing exchange-traded options. Today, those markets constitute an important part of the futures industry.[18]

Based upon that successful experience, the Commission is proposing to lift the ban on agricultural trade options under a similarly structured pilot program. As under the previous pilot options program, the program being proposed for agricultural trade options will run for three years. During that time the Commission will closely monitor the efficacy of its rules and their implementation by the industry. Although the Commission currently intends that the rules promulgated by the Commission under

[15] *See* the Division's study at pp. 23–24, 28.

[16] *Id.* at p. 31.

[17] Currently, trade options and those offering them are subject only to regulations regarding fraud. *See*, 17 CFR 32.4.

[18] Overall year-to-date volume through July 1997 for exchange-traded futures and option contracts is 314,068,673 contracts. Of the total number of contracts traded, approximately 20 percent are option contracts.

the pilot program will remain in effect at the termination of the pilot program, it will amend them as experience warrants.[19]

During the course of the pilot program, the Commission anticipates that it will direct the Division to conduct at least two reviews of trading experience. The conduct of such reviews may require the issuance by the Division of industry-wide special calls for information from agricultural trade option vendors. Such information requests, although used sparingly, were an integral part of the Commission's successful monitoring of the prior pilot program and can be expected in connection with the Commission's evaluation of the relative success of this pilot program as well.

*B. Overall Structure of Proposed Rules*

The advance notice identified a number of risks associated with lifting the prohibition on options on the enumerated agricultural commodities and the possible regulatory responses to those risks, ranging from little or few regulatory protections to the full panoply of protections mirroring those that are applicable to exchange-traded options. It also identified likely immediate uses for trade options on these commodities and a number of more theoretical possible uses. In proposing the structure for this pilot program, the Commission determined to include within the pilot program initially those forms of trade options the terms of which are likely to be most widely understood and which are closest to current cash market practices. Accordingly, the Commission is proposing to lift the trade option ban on enumerated agricultural commodities for physically-settled contracts between commercial parties in the normal merchandising chain for the underlying commodity. Exercise of an option between these parties would involve the delivery of the underlying commodity from one party to the other either by immediate transfer of title to the commodity or by transfer of a forward contract commitment.

Since at least 1985, when the Commission's General Counsel issued an interpretative statement entitled, ''Characteristics Distinguishing Cash and Forward Contracts and 'Trade' Options,'' 50 FR 39656 (September 30, 1985) (1985 OGC Interpretation), there has been wide understanding that one form of trade option prohibited by the ban involved a transaction whereby a producer, in return for payment of a premium, would have the right but not the obligation to deliver his crop to an elevator at the specified price. The producer would have the choice to deliver the commodity elsewhere or at the original elevator for a higher price.[20] In addition to being commonly understood, this form of trade option is a logical extension of other, permitted cash market practices.[21]

Option contracts can be used for a variety of purposes depending on the structure and settlement characteristics of a particular contract and the nature of the option customer's cash market commitments or position. Upon exercise, options can settle either by physical delivery of the underlying commodity or by cash payment. Cash-settled options upon exercise result only in the exchange of cash; a separate marketing arrangement is necessary to merchandize the underlying commodity. In this respect, because they are distinct from marketing contracts, cash-settled options bear a resemblance to exchange-traded contracts. In contrast, upon exercise of a physical delivery option, the purchaser of a put or the seller of a call actually delivers the underlying commodity to the counterparty. Thus, like a forward contract, a physical delivery trade option can be used as a means of merchandizing the commodity.[22]

Commenters suggested a number of additional reasons for inclusion of physical delivery options within the pilot program. Several commenters opined that one of the primary benefits of agricultural trade options will be to permit producers to enter into such agreements directly with those with whom they share trusted cash market business relationships. A second often suggested benefit of agricultural trade options is the producer's ability to enter into enhanced forms of merchandizing agreements. Several commenters, for example, expressed the desirability of being able to enter into option contracts that would give them the right but not the obligation to deliver on the contract. Such individual could ''walk away'' from delivery to avoid the purchase or sale of the commodity at too high or low a price during a production shortfall or for any other reason. The ability to avoid delivery in the case of a production shortfall, in the view of these commenters, would allow producers to contract (through options) for a higher percentage of their expected production. Including first handlers of the commodity underlying agricultural trade options within the pilot program and including all physical delivery agricultural trade options as eligible for the pilot program would allow producers to achieve these benefits.

Several commenters registered their concern that, if permitted, trade options would merely replicate exchange-traded options in all respects, but in a less-regulated environment. They argued that on that basis the risks associated with trade options do not outweigh their potential benefits. Physical delivery trade options, however, will not simply replicate exchange-traded instruments. As noted above, physically-settled trade options offer the opportunity to combine a marketing and risk management tool. In this respect, physical delivery trade options on the enumerated commodities would be similar in character to forward contracts in that each would be an individually

[19] In this regard, the Commission anticipates that, if it promulgates final rules, it will promulgate them as ''interim final rules,'' denoting its intention to revisit them three years after implementation. It is not proposing to limit the time during which the rules will remain effective in order to avoid issues of contracts extending beyond the three-year period. Instead, it will evaluate the efficacy of the interim final rules at the conclusion of the pilot program and reissue them if amendments are needed. Any such amendments would not affect the validity of contracts entered into prior to the issuance of such amendments.

[20] The 1985 OGC Interpretation described this form of trade option as a contract that ''establishes a minimum contract price determined when the contract is written, and [for which] a premium is collected, either at the initiation of the contract, during the life of the contract or, together with interest accumulated over the life of the contract, at the time of settlement. In return for the premium, the producer has the right to require the merchant to accept delivery of and pay a minimum contract price for the crop. However, the producer may forfeit the premium and seek a higher price for, and deliver, the crop elsewhere.'' 50 FR 39656, 39660.

[21] For example, the same 1985 OGC interpretation discussed two other examples of delivery contracts having minimum price characteristics, finding them to be within the forward contract exclusion of the Act. Section 1a(11) of the Act, the forward contract exclusion, provides that futures contracts which are regulated under the Act do ''not include any sale of any cash commodity for deferred shipment or delivery.'' These two contracts, although having some option pricing characteristics, were determined to be forward contracts because, unlike option contracts, they were intended to be a means of merchandizing the commodity, obligating the parties to the contract to make or take delivery. 50 FR 39660.

[22] This is not to suggest that the pay-out characteristics of forwards and futures resemble those of physically-delivered or cash-settled options, respectively. To the contrary, futures and forwards share a similar risk/return profile which differs markedly from the risk/return profile shared by all options. Rather, the resemblance between forwards and physical-delivery options is the ease of their use as a form of marketing arrangement that can also be used to hedge price risk.

For those not wishing to combine a merchandizing arrangement with a risk-management function, cash-settled options offer greater settlement ease. This is true whether settlement is a result of the option's offset or its exercise.

negotiated contract involving, if exercised, the merchandising of the commodity through normal marketing channels. This potential additional cash market function [23] of physical delivery trade options argues in favor of their inclusion under the pilot program.

After having determined, for the above reasons, that trade options between counterparties in normal cash market channels requiring physical delivery are appropriate for inclusion within the pilot option program, the Commission has matched the level of regulation being proposed to the risks associated with those instruments. Not only is this approach intended to strike the appropriate balance of regulation of the instruments included within the pilot program, but it provides a solid foundation for analyzing and comparing the regulatory approaches which should be applied in the future when considering other possible uses of trade options. Accordingly, were the Commission to propose to permit additional forms of trade options, it would re-examine the adequacy of the proposed regulatory provisions of the pilot program. The major components of the proposed regulations governing the pilot option program are as follows: regulation of agricultural trade option vendors, including net capital, recordkeeping and streamlined registration, and proficiency testing requirements; required risk disclosure to option customers; and several restrictions on the market strategies or contract structure. These proposed components of the pilot regulations are discussed below.

### *C. Regulation of Agricultural Trade Option Merchants*

A primary regulatory protection of the pilot program is its restriction of option counterparties to agricultural commercial participants. Thus, agricultural trade option vendors—those persons or entities engaged in the business of the offer or sale of agricultural trade options—as a matter of course, will be businesses active in agricultural cash markets. Agricultural trade option vendors, by virtue of their cash market operations, should have achieved some level of financial soundness and proficiency with respect to risk management strategies. In addition, the Commission is proposing streamlined or targeted requirements relating to agricultural trade option vendors' financial soundness, competency, and probity, including the requirement that such vendors be registered with the Commission under the new registration category of ''agricultural trade option merchant.''

#### 1. Net Asset and Other Financial Requirements

By their nature, agricultural trade options, like all commodity futures or option instruments, involve risk, particularly the risk arising from the need for performance at a future date by the counterparty to the contract. Typically, the greatest financial risk assumed by an option purchaser is credit risk. Credit risk is the risk that the seller of the option may fail to perform on the obligation if the purchaser chooses to exercise the option contract. In the event of such nonperformance, the option purchaser stands to lose the option premium if it has already been paid plus any opportunity gain that would have been achieved if the option were exercised.[24]

In an exchange environment, the clearinghouse and regulations requiring minimum net capital for market intermediaries reduce counterparty credit risk. Off-exchange transactions do not have the safety of the clearinghouse to reduce credit risk. In an off-exchange environment, counterparties can take a variety of steps to help assure that a counterparty is able to perform and performs on its obligation. Sophisticated counterparties may have the means formally to evaluate the creditworthiness of their counterparties. They also may require the posting of collateral or a third party guarantee. Less sophisticated counterparties may simply rely on trust, choosing to deal only with known counterparties with whom they have ongoing business relationships. Another approach to enhancing an agricultural trade option merchant's ability to perform on a trade option is to require the merchant to manage the market risk of trade options through exchange-traded options.

Because many agricultural trade option customers will not have the resources to conduct formal creditworthiness evaluations of their counterparties, some degree of regulatory financial protections are desirable. Accordingly, the Commission is proposing a requirement that agricultural trade option merchants maintain a minimum level of net worth. In addition, the Commission is proposing that agricultural trade option merchants segregate from their own funds premiums paid by customers at initiation of an option contract. The Commission, however, is not proposing specific forms of covering the agricultural trade option merchant's market exposure.

*a. Net Worth.* Minimum financial requirements have been used by government regulators to establish a base level for entry or access to a market by individuals and companies. Such requirements are intended to assure that companies or entities conducting business offer some assurance of having the financial wherewithal to perform on their obligations. The Commission places minimum financial requirements on futures commission merchants (FCMs) and introducing brokers (IBs) as a condition of registration with the Commission. The United States Department of Agriculture (USDA) and various states impose minimum financial requirements in the cash grain markets on federally-licensed grain warehouses.[25]

Although many commenters favored minimum financial requirements,[26] others opposed them on the grounds that such minimum financial requirements would exclude smaller entities from the agricultural trade option business, possibly accelerating a trend to greater concentration in cash grain markets. Some commenters argued that the financial requirements currently imposed by the various states would be sufficient to foster financial integrity in the trade option markets. However, not all states have minimum financial requirements for those involved in the cash trade, and the requirements of those that do vary widely. Accordingly,

[23] Although, as discussed below, the Commission also is proposing to permit exchanges greater flexibility in offering agricultural options, physical-delivery trade options entered into between those who have a cash-market relationship are apt to be different in nature than exchange-traded contracts—that is, they are more likely to be more highly customized, including calling for delivery at widely scattered facilities.

[24] For example, consider the case of a producer who had paid a premium of $.10 per bushel for a put option giving him the right to sell corn at a price of $2.80 per bushel. At harvest the price of corn is $2.70 per bushel, and the producer decides to exercise the option. If the option seller defaults on the contract, the producer stands to lose the $.10 per bushel paid for the option. In addition the producer loses the opportunity to sell corn at $2.80 per bushel, instead having to accept the market price of corn at $2.70 per bushel.

[25] A number of states require entities to meet a specified net worth requirement as a condition of obtaining a state grain warehouse's or grain dealer's license. The minimum net worth requirements range up to a minimum of $50,000 in Illinois. Some states also require that grain warehouses obtain a surety bond and have established indemnity funds to offset producer losses on grain stored in warehouses. Such indemnity funds, depending upon the state, are funded either by the producers or the elevators. For example, the indemnity fund in Illinois is funded by grain elevator contributions, while in Indiana producers contribute to the fund.

[26] Of those favoring minimum financial requirements, some specifically suggested that trade option vendors be required to meet the same financial requirements currently applicable to FCMs and IBs.

the Commission believes that a common federal minimum standard should apply to all those involved in the business of offering agricultural trade options, regardless of geographic location or the agricultural commodity.

Accordingly, the Commission is proposing that agricultural trade option merchants, as a condition for offering such contracts, have and maintain a minimum of $50,000 of net worth.[27] This requirement corresponds to the overall minimum financial requirement established by USDA as a condition of obtaining a federal grain warehouse license. The Commission is proposing this minimum net asset level based upon the observation that these warehouses already enter into forward contracts as part of their cash business and that the USDA requirement appears to have been adequate. As noted above, the physical delivery agricultural trade options being included under the pilot program are similar in nature to forward contracts, including the financial risk to the warehouse or other first handler.[28]

As noted above, the proposed net asset requirement is ongoing in nature. Accordingly, agricultural trade option merchants would be required to maintain the specified level of net worth in order to enter into new trade option contracts and to notify the Commission at any time if they have fallen below prescribed levels. The Commission is also proposing that agricultural trade option merchants be required to perform a reconciliation of their financial position at least monthly to determine compliance with this requirement.[29]

Because agricultural trade option merchants are primarily engaged in a cash market business, this proposed rule does not require them to change accounting procedures to conform to specific Commission accounting requirements, provided they use ''fair value'' accounting under generally-accepted accounting principles.[30] It is the Commission's understanding that this accounting method is used by most firms in the cash market business.

*b. Segregation of Customer Premiums.* The Commission is proposing an additional financial protection—requiring that agricultural trade option merchants segregate customer premiums from their own capital. The advance notice noted the potential financial and regulatory concerns which arise from the asymmetric credit risk of option contracts. That asymmetry exists when the party purchasing the option pays the cost of the option—the option premium—in advance of the counterparty's having to perform on its obligation.[31] The purchaser then faces the risk that the seller of the option might fail to perform on the contract, if exercised. Under such circumstances, not only does the option purchaser lose the opportunity gain that would have been realized through the exercise of the option, but also would be subject to the out-of-pocket loss of the option premium. This is in contrast to forward contracts, where both parties have reciprocal obligations and neither makes a payment in advance of performance. The ability to collect an up-front payment of premiums may also give merchants an incentive to sell options in order to generate option premiums for immediate use as operating funds.

In order better to safeguard customers' up-front premium payments and to discourage the writing of trade options in order to generate immediate operating funds by a firm experiencing financial difficulties, the Commission is proposing that option premiums be held in segregation while an option contract is open, and that option premiums not be available to the agricultural trade option merchant for use in its business during the period an option is open. The Commission is proposing that the premium associated with an option must be separately accounted for and segregated in an account held for the benefit of option customers. Such funds, when deposited in a bank, trust company, or other financial institution, must be deposited under an account name which clearly identifies them as segregated customer funds and shows that they are segregated as required by Commission regulations.

*c. Cover of Market Risk.* The advance notice posed several specific questions relating to whether the Commission should require that agricultural trade option merchants cover the market risk of the agricultural trade options which

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[27] The minimum net worth requirement, as proposed, is a continuing requirement. If an agricultural trade option merchant's net worth falls below this amount, the merchant would not be permitted to offer to buy or to sell additional trade options until coming into compliance with the requirement. Moreover, in such a situation the agricultural trade option merchant must immediately cease offering or entering into new option transactions and must notify customers having premiums which the agricultural trade option merchant is holding under § 32.13(a)(4) of the proposed rules that such customers can obtain an immediate refund of that premium amount, thereby closing the option position.

[28] That is not to suggest that the risks to the first handler are precisely the same between trade options and forward contracts. In the case of options, the first handler is not assured of actually receiving delivery of the commodity in contrast to a forward contract. However, the means available to the first handler to cover the financial risk of the transactions are similar.

[29] At least three commenters urged that daily mark-to-market of all positions should be required. The Commission is not proposing this requirement at the current time, although that is certainly the best practice and should be encouraged.

Under the proposed rules, agricultural trade option contracts can be exercised only by delivery and cannot be purchased back, resold or otherwise offset before the expiration of the contracts. While the net value of an agricultural trade option merchant's option position will fluctuate on a daily basis, the option contracts themselves will tend to be long term commitments similar to forward contracts. In this respect, an agricultural trade option merchant will not be faced with the daily potential of large shifts in its option position due to rapid changes in market prices. Moreover, the price risk to the agricultural trade option merchant of an unhedged option position will be similar to that of an unhedged forward contract position. For example, elevators selling unhedged put options to producers face the risk that prices fall, thereby resulting in the elevator purchasing a commodity at a relatively high price when producers exercise their options. This is the same risk faced by an elevator entering into unhedged forward contracts.

Because of the similarities in long-term price risk between the options which can be offered under the proposed rule and forward contracts, the availability of hedging tools and the expectation that agricultural trade option merchants will hedge their option positions in a manner similar to their forward contract positions and because of varying levels of sophistication among those who may be involved in offering agricultural trade options, the Commission is not now proposing a daily net worth calculation. Nonetheless, the Commission seeks comments on this issue, asking commenters to focus in particular on the needed sophistication of potential agricultural trade option merchants to mark assets and liabilities to market on a daily basis, whether daily marking-to-market is desirable or necessary in light of the long-term nature of the option positions and whether current standards used by these entities in operating in forward markets are sufficient for operating in the market for physical options given the similarity in the risks faced by the merchants.

[30] The Commission believes that the guidance provided in the American Institute of Certified Public Accountant's Audit and Accounting Guide, entitled, ''Brokers and Dealers in Securities,'' provides the relevant guidance which should be followed in connection with assigning a fair value to agricultural trade options. It states: ''Under generally accepted accounting principles, fair value is measured in a variety of ways depending on the nature of the instrument and the manner in which it is traded. Many financial instruments are publicly traded, and end-of-day market quotations are readily available. Quoted market prices, if available, are the best evidence of the fair value of a financial instrument. If quoted market prices are not available, management's best estimate of fair value should be based on the consistent application of a variety of factors available to management.'' A complete discussion of the factors is provided in the audit guide.

[31] Generally producers have used forward contracts as a means of hedging price risk (in addition to merchandizing the commodity), obviating the need for the producer to maintain a futures position or incur out-of-pocket expenses. Under this arrangement, the elevator generally covers the price risk of the forward contract by entering into a futures position and paying the required margin obligations on the position. The elevator may then recoup this cost implicitly. To the extent first handlers structure agricultural trade options in this manner as well, there will be no up-front payment, and no funds will be segregated. Of course, because under a trade option a producer may elect not to deliver the commodity, the elevator would be expected to establish some other means of recovering the cost of the option premium if it is not paid up front.

they write. One commenter, a futures exchange, suggested that the Commission require that agricultural trade option merchants be required to cover the market risk of their trade options one-for-one with exchange-traded options. Other commenters, however, disagreed, pointing out that agricultural trade options may be offered for commodities in which there is no actively-traded exchange market or may be written for a form, grade, expiration, or delivery location not provided under exchange-traded instruments. In such instances, a one-to-one cover requirement using exchange-traded instruments may be economically inefficient or impossible.

In general, it is the Commission's view that the market risks faced by entities offering trade option contracts will be similar to those currently associated with the offer of forward contracts. For example, an elevator entering into a forward contract to purchase grain from a producer faces the risk that the price of grain at the time of delivery will be lower than the contract price, requiring the elevator to pay the producer a higher price than the elevator can obtain when it resells that grain. Balancing this risk is the possibility that prices will rise making the contract price relatively cheap. Elevators may choose to bear this risk, chancing the fall in cash prices against the opportunity to profit if cash prices rise, or they may offset the market exposure of rising prices by selling a futures contract on one of the futures exchanges.

An elevator selling a put option to a producer faces similar market risk as one entering a forward contract; that is, that spot market prices will be lower than the price at which the option is exercised. As with forward contracts, the elevator may choose to bear the market risk or to cover the market risk by purchasing an exchange-traded put option. Whether or not the elevator chooses to bear the market risk associated with the trade option, however, it always receives the premium from the producer regardless of whether prices rise or fall.

The Commission assumes that current cover practices common to forward contracting will be applied to agricultural trade options. The Commission is aware of no reason why those offering trade option contracts would be any less likely to cover market exposure on trade option contracts than is currently the case with those offering forward contracts. In light of the similarities of such option contracts to forward contracts as discussed above, the Commission is of the view that elevators can determine individually the manner in which they will cover their exposure to market risk, if at all.

2. Probity and Competency Requirements for Agricultural Trade Option Merchants

*a. Registration.* Registration of commodity professionals is an important means by which the Commission polices the futures and option industry and is the primary mechanism for reassuring the public of the futures professional's probity and proficiency.[32] Registration is an indisputably important safeguard to the public and will be critically important in the decentralized market permitted under the pilot program. However, the offer and sale of trade options will be a complement to the first-handler's existing cash market businesses, to some extent offsetting the need for extensive registration requirements. Accordingly, the Commission is proposing that those engaged in the business of the offer and sale of agricultural trade options must register under the new registration category of ''agricultural trade option merchant.'' The Commission is proposing a streamlined form of registration covering both the agricultural trade option merchant as an entity and its authorized sales force.[33]

The streamlined registration requirement being proposed consists of the single filing of a form identifying the agricultural trade option merchant, its principals (if the agricultural trade option merchant is an entity), and on separate pages, information identifying its sales agents, a certification that none of the individuals is statutorily disqualified from engaging in a commodity-related business under the statutory disqualification provisions of section 8a(2) or 8a(3) of the Act, a set of fingerprints for each individual, a copy of the entity's certified financial statements completed within the prior 12 months, and evidence that individuals have completed successfully a proficiency test specifically geared toward agricultural trade options. Amendments of such registration applications for new associated persons can be filed as necessary.

The Commission is seeking comment on whether this registration function should be delegated to the National Futures Association (NFA). NFA has been delegated responsibility by the Commission to administer the registration procedures for all futures industry professionals. The possible delegation to NFA of responsibility for processing the registration applications of agricultural trade option merchants would be consistent with this practice and, should NFA agree to accept this responsibility, this delegation would conserve Commission resources, as well.

*b. Competency Testing.* A second important customer protection is competency testing of futures professionals. Because agricultural trade option merchants will not be engaged in other facets of futures and option sales, the series 3 examination which is generally required for futures professionals would not be necessary. Accordingly, the Commission is proposing that a specialized examination targeted at agricultural trade options be developed.[34] The Commission, as it has with all other similar testing programs, proposes to delegate this testing function to the NFA. In light of the proposed competency test for agricultural trade option merchants, the Commission is not proposing an explicit educational requirement. Successful completion of this targeted examination would evidence proficiency in those areas relevant to the offer and sale of agricultural trade options.[35]

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[32] In this regard, by virtue of the required registration of their counterparty as agricultural trade option merchants, customers will have available to them under section 14 of the Act the Commission's reparations program for the resolution of disputes arising under agricultural trade option contracts. As proposed, customers will be apprised of this right in the disclosure document.

[33] The Commission has not proposed to permit FCMs to substitute FCM registration for registration as an agricultural trade option merchant based on the assumption that few, if any, FCMs would qualify to be an agricultural trade option merchant by virtue of the requirement that such entities also be a commercial user of the underlying commodity. The Commission requests comment on whether this assumption is not correct and, if so, whether registration as an FCM should be permitted in lieu of registration as an agricultural trade option merchant. The Commission also requests comment on whether Commission rule 1.19 should be amended to permit FCMs to conduct such a business.

[34] Although agricultural trade option merchants would only be required to pass the more specialized agricultural trade option examination, passing the series 3 examination would also be acceptable as a condition of registration.

[35] Many commenters opposed mandatory educational requirements for either agricultural trade option merchants or customers. The Commission is of the view that customers have the right to expect that such merchants and their sales forces will have successfully demonstrated mastery of the issues relevant to the offer or sale of these instruments. Although the Commission is not proposing an educational requirement for customers, it strongly urges private sector organizations to provide a variety of means of fulfilling this need. The success of the pilot program will depend, in part, on the success of various organizations in educating potential trade option customers. In this regard, a participant at the

*c. Ethics Training Requirement.* The final protection relating to both probity and competency is the ethics training requirement applicable to all Commission registrants. A few commenters expressed concern that without this requirement, if the prohibition on agricultural trade options were lifted, regulatory oversight of agricultural trade option merchants could be inadequate. The Commission carefully considered what degree of ethical instruction would be necessary and appropriate for registered agricultural trade option merchants and is proposing to apply to agricultural trade option merchants the same mandatory ethical training requirements currently required by the Act for all other registrants. See, 17 CFR 3.34.[36]

Under this requirement, Commission registrants are required to attend ethics training within six months of being granted registration and, thereafter, every three years. This ethics training must be at least four hours in duration for the initial session and one hour in duration for subsequent periodic sessions. Training is available from a variety of sources and can be undertaken through videotape, computer programs, or other similar means, in addition to attendance in person. *See,* 17 CFR 3.34(b)(3)(iii). These requirements apply equally to all Commission registrants and are being proposed to apply to agricultural trade option merchants as well.[37]

*D. Restrictions on the Instruments or Market Strategies*

The Commission posed a series of questions in the advance notice related to restrictions on the use of option contracts by various parties. In particular, the Commission asked whether it would be appropriate under a trade option exemption for producers to write covered calls and whether agricultural trade options should be permitted to be bundled to create risk-return payouts different from a simple put or call.

Several commenters expressed the opinion that option customers should have unfettered freedom over the types of options available and the manner of their use, ceding only the restriction that trade options should be related to a business purpose. Others, however, expressed concern that more complex instruments or trading strategies might lead to high levels of fraud and abuse. Although many of these commenters favored a continuance of the prohibition as the remedy, their concern over fraud and abuse was shared by many commenters who favored lifting the prohibition. These commenters accepted the wisdom of some limitations or conditions on the types of options and trading strategies that might be used, particularly in connection with a pilot program.

The Commission remains concerned that, in lifting the prohibition on agricultural trade options, it not also open the door to fraudulent dealing. Although additional risk management instruments may assist the agricultural sector in meeting the new challenges which it faces, opening up this long-restricted market to all types of options may unnecessarily expose participants to abuse. In order to balance these concerns, the Commission is proposing several limitations on the structure of option contracts and on permitted trading strategies or uses. First, the Commission is proposing a prohibition on the writing of covered call options by producers. Covered call options are short call positions written by an individual who has a long position in the underlying commodity. The option is covered in the sense that, if the option is exercised, the writer of the option has the commodity in his or her possession to deliver on the contract. While an individual writing a covered call has limited risk in the sense that he or she possesses a commodity which can be delivered against the option contract, the call does not provide downside price risk protection on the long commodity position except to the extent that a premium has been paid by the purchaser. Moreover, the short call caps any gains that the producer might earn on the long commodity position. Although such a strategy may be appropriate in certain instances, it is susceptible to abuse to the extent that producers do not appreciate the extent to which downside price protection and upside pricing potential is surrendered for a premium payment and is not appropriate for inclusion in the pilot program. It is also the Commission's opinion that the writing of put options by agricultural producers is not an appropriate business-related use of options. The Commission, therefore, is proposing a prohibition on the writing of such options.

However, trade option customers would be permitted to enter into options that simultaneously combine long put and short call option positions only to the extent that the size of the delivery quantity associated with the short call option position does not exceed the size of the delivery quantity associated with the long put option position. Thus, for example, an agricultural trade option could give the producer the right to deliver 5,000 bushels of corn at harvest time at a price of $2.50 per bushel and the elevator the right to call for the delivery of 5,000 bushels at $3.00 per bushel. Under such an option, if at harvest time the price of corn was below $2.50, the producer would exercise the option to deliver the 5,000 bushels of corn at $2.50 per bushel. If, however, the price of corn was above $3.00 per bushel, the elevator would exercise its option to call for the delivery of 5,000 bushels of corn at $3.00 per bushel. If the price of corn was between $2.50 and $3.00, it would not be economically rational for either party to call for or to make delivery of corn. In this example, the producer has purchased a put option from the elevator for 5,000 bushels of corn with a strike price of $2.50 per bushel. The producer has also sold a call option to the elevator for 5,000 bushels of corn at a strike price of $3.00. This transaction would be permissible under the proposed restriction that the delivery amount of the short call option portion of the contract cannot exceed the delivery amount of the long put option. However, the elevator could not obtain the right to call for the delivery of more than 5,000 bushels of corn. Moreover, the Commission is proposing that under no circumstances would a producer be permitted to write a put option, even if such option was combined with a long call option.

In addition, the Commission is proposing to limit the termination and reestablishment of agricultural trade option positions. Some commenters expressed the view that agricultural trade options should not be used as a means to speculate in commodities. One manner in which speculation might be possible would be to move into and out of trade option positions based on updated predictions of expected price moves. Although some commenters argued that such strategies could enhance the price of the commodity being merchandised, the ultimate success of such a strategy would depend upon one's ability accurately to foresee

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Commission's open meeting in Memphis, Tennessee, representing the National Grain and Feed Association stressed her organization's commitment to these efforts.

[36] In 1992, section 210 of the Futures Trading Practice Act of 1992 (FTPA) amended section 4p of the Act to mandate ethics training for persons required to be registered under the Act. On April 15, 1993, the Commission adopted regulation 3.34 to implement the requirements of FTPA section 210. 58 FR 19575. Commission regulation 3.34 requires natural persons registered under the Act to attend ethics training to ensure that they understand their responsibilities to the public under the Act.

[37] Those functions relating to ethics training delegated to NFA for all Commission registrants will also be proposed to be delegated to NFA for agricultural trade option merchants.

future price movements. Limiting the ability to enter and exit trade option contracts is consistent with the Commission's desire to include within the pilot program those trade options which are closest in nature to forward contracts, contracts for which offset is not permitted. Thus, the Commission is proposing that, once a trade option contract is purchased or sold, that position cannot be offset prior to expiration.

*E. Risk Disclosure, Required Contract Terms and Required Account Information*

1. Risk Disclosure Statements

The Commission in its advance notice noted that required risk disclosures are a customer protection generally used in the regulation of futures and option trading and requested comment on whether, and in what form, risk disclosure should be required if the prohibition on agricultural trade options were lifted. The majority of the commenters responding to these questions agreed that mandated written risk disclosure would be appropriate, but varied in their view of the degree of detail which should be required. Some commenters suggested that the mandated risk disclosure statement should disclose all financial risks, including a description of worst possible scenarios. Others were of the view that a more general statement of risk would be sufficient.

The Commission is of the view that a mandatory written risk disclosure statement for agricultural trade options is necessary and appropriate. Such a written statement is essential to ensuring that trade option customers receive knowledge of and understand the risks involved in entering into such transactions. Because of the current ban on agricultural trade options, customers initially will have had no experience using such instruments. Moreover, agricultural trade options may attract customers with little or no experience trading on designated futures or option markets. In light of this, the risk disclosure statement being proposed by the Commission addresses the full range of risks that were identified in the Division's study. This disclosure statement has two parts. The general disclosure is brief and is intended to cause a customer to ask additional questions of the agricultural trade option merchant or to seek additional information from other sources, as necessary. For example, the Commission is proposing that the disclosure statement include mandatory language regarding the requirement that trade options must be entered into in connection with the conduct of the business of the agricultural trade option merchant and its customers. This discussion would also provide producers in particular with guidance regarding prudent, business-related uses of trade options.

In addition, a transaction-specific portion of the disclosure is designed to provide specific information relating to the terms of a particular transaction. In this portion of the disclosure statement, the Commission is proposing to require that, where the full option premium or purchase price of the option is not collected up front or where through amendments to the option contract it is possible to lose more than the amount of the initial premium, the agricultural trade option merchant must disclose the worst possible financial outcome that could be suffered by the customer. In this regard, the provision of the mandatory risk disclosure statement will not relieve the agricultural trade option merchant of the responsibility to avoid material misstatements or omissions or any other form of fraudulent misconduct. This Commission and the courts have repeatedly stated that provision of a mandatory risk disclosure statement will not necessarily cure what is otherwise fraud. *See, e.g., Clayton Brokerage Co.* v. *Commodity Futures Trading Commission*, 794 F.2d 573, 580–581 (11th Cir. 1986). In particular, agricultural trade option merchants may need to make such additional disclosures as necessary in light of all the particular circumstances, including the nature of the instrument and the customer.

The Commission is proposing that the full disclosure statement must be delivered to the customer prior to the customer's first transaction with the particular agricultural trade option merchant, as is customary with respect to current practice in futures and option trading. In subsequent transactions, only the transaction-specific portion need be provided. The Commission is requesting comment on whether this requirement should allow its fulfillment through electronic media. Moreover, the agricultural trade option merchant must retain a written acknowledgment which has been signed and dated by the customer evidencing receipt of the disclosure statement by the customer.

2. Required Contract Terms

In addition to delivery of the required disclosure statement, the Commission is also proposing to require that the option contract itself (a) be written and (b) contain certain specified provisions. Generally, the terms of designated futures and option contracts are contained in the rules of an exchange, which under the Act are required to be approved by the Commission. In the case of trade options, like forward contracts, the particular terms are left to individual negotiation between the counterparties. However, in connection with its issuance of guidance relating to ''hedge-to-arrive'' contracts, CFTC Interpretative Letter No. 96–41, Comm. Fut. L. Rep. ¶ 26,091 (May 15, 1996), the Division observed that such contracts often contained few or insufficiently expressed terms and conditions. The lack of written terms and conditions in these contracts led to widespread disagreement among parties over the terms of the instruments, complicating the resolution of various issues. To reduce the chance for disputes over vaguely defined contract terms in connection with agricultural trade options, the Commission is proposing to require that the trade option contracts be written and include a number of specified terms. In particular, the Commission is proposing that such contracts must include terms specifying the procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise; total quantity and grade of commodity to be delivered if the contract is exercised and any adjustments to price for deviations from stated quality or grade; listing of elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees, and other charges; the strike price(s) of the option contract; additional costs, if any, which may be incurred if the commodity option is exercised; and delivery location, if the contract is exercised.

An important means of safeguarding the public from abusive transactions is the requirement that transactions be confirmed in writing at the time of contract initiation. This provides the customer effective notice of the terms of the agreement, permitting the customer to object to transactions. Moreover, such a requirement likely would be beneficial to the merchant as well by providing an effective means of avoiding disputes over the terms initiating the transaction. The Commission, therefore, is proposing that agricultural trade option merchants provide trade confirmation and verification of information relating to specified contract terms within 24 hours of executing a contract. *See,* proposed § 32.13(a)(6).

3. Report of Account Information to Customers

The Commission is proposing that agricultural trade option merchants be required to furnish a monthly account statement to all customers with open option positions. This statement would include a complete listing of all individual agricultural trade option transactions entered into by the customer, all outstanding requests to enter into an agricultural trade option at the time of issuance of the statement, a current commodity price related to all open option positions or open orders held by the customer and the amounts of any funds owed by or to the customer related to the purchase or sale of option contracts or to the delivery of physical commodity related to the exercise of an option.

Agricultural trade option merchants will also be required to indicate clearly expiration dates of options and to highlight those options which will expire within the next month. This may be done by highlighting the expiration information on such account statements, by using boldface type for such information, by separating these contracts from other contracts on the account statement, or by listing contracts chronologically by expiration date or by some similar method. The Commission is proposing this requirement as a means to assist agricultural trade option customers in managing their option accounts. Even though agricultural trade options cannot be offset, it is important for customers to know the current status of their option contracts with respect to which options may be approaching expiration and whether options are in or out of the money.

In addition, the Commission is proposing to require that agricultural trade option merchants supply current commodity price quotes or other information relevant to an option customer's positions within 24 hours of a request. In the case of options that may be exercised at any time, it is important that customers obtain timely commodity price quotes in order to be able to make decisions regarding exercise of the options. Although the Commission anticipates that price information typically would be available immediately, other information might require the agricultural trade option merchant to search its records to obtain the requested information. The Commission believes that a 24-hour period should be sufficient to enable agricultural trade option merchants to retrieve the information and to respond to the customer.

*F. Recordkeeping and Reporting Requirements*

1. Required Books and Recordkeeping

The maintenance of full, complete, and systematic books and records by agricultural trade option merchants is crucial to the Commission's ability to respond to complaints of customer abuse arising from such transactions and is necessary to the agricultural trade option merchant's establishment of appropriate internal controls of their financial operations. Although most merchants will already have recordkeeping systems in place, the proposed pilot program for agricultural trade options involves a number of regulatory protections, such as furnishing customers with disclosure statements, which may require records which have not been customary for first handlers as part of their cash market businesses. Accordingly, the Commission is proposing to require that records relating to agricultural trade options including covering transactions must be kept and maintained for a period of five years and must be readily accessible during the first two years of that five-year period. *See,* 17 CFR 1.31.

Specifically, the Commission is proposing that trade option merchants be required to maintain full, complete, and systematic records of all agricultural trade option transactions. Such books and records should include all orders (filled, unfilled, or cancelled), books of record, journals, ledgers, cancelled checks, copies of all statements of purchase, exercise or lapse, and reports, letters, disclosure statements required by proposed § 32.13(a)(7), solicitation or advertising material or other such communications with agricultural trade option customers or potential customers. All such books and records must be kept for a period of five years from the date of their creation and must be readily accessible during the first two years of the five-year period. All such books and records must be open to inspection by any representative of the Commission or the U.S. Department of Justice or the NFA in connection with functions delegated to it.

2. Routine Reports

In addition to the maintenance of books and records, the Commission is proposing to require quarterly reporting by all agricultural trade option merchants of information relating to their agricultural trade option transactions. These reports are intended to enable the Commission to evaluate the success of the pilot program on an ongoing basis. The information required to be reported will enable the Commission to determine the overall size of the market, the types of contracts being offered, the costs to customers, the amount of commodity being merchandized through options, and the number of customers using trade options. Routine quarterly reporting from all agricultural trade option merchants also will permit the Commission to construct a more complete picture of the market and will better allow the Commission to evaluate the impact of activity in the trade option market on that in the cash and exchange-traded markets.

Specifically, the Commission is proposing that reports shall be filed quarterly by any registered agricultural trade option merchant having an open trade option contract during the reporting period. The Commission is proposing to delegate to the NFA responsibility for receiving and maintaining these reports. NFA will make the information in this data base available to the Commission upon request. Initially, the Commission anticipates that such reports may be filed manually, including by facsimile or electronically, by dial-up transmission or via the Internet. Commenters are requested specifically to address issues relating to the means of filing reports and their capability to file electronically.

3. Special Calls for Information

During the course of the pilot program, in addition to routine quarterly reports, the Commission anticipates that it will direct the Division to conduct two special calls for information from agricultural trade option merchants during the course of the pilot program. The Commission will use the information it gathers through these special calls to conduct a study to evaluate the success of the pilot program.

Under a special call, every agricultural trade option merchant will be required to provide the Commission with the information specified in the special call. Such information may include: (a) Positions and transactions in agricultural trade options; (b) positions and transactions in commodity options and/or futures on all contract markets entered to cover agricultural trade options; (c) positions and transactions in cash commodities, their products, and by-products and; (d) customer identification information. Such information may include the name, address, and position of each

customer of the agricultural trade option merchant. All agricultural trade option merchants should maintain a current listing of such customer identification information.[38]

*G. Internal Controls*

The Commission noted in the advance notice that generally requirements regarding internal controls are a condition of registration. These include the requirement that FCMs provide audited financial statements, have in place a system of internal controls, and supervise the conduct of all employees. The Commission also noted that many country elevators and others at the first-handler level of the marketing chain do not now have in place adequate internal controls to engage in a variety of off-exchange transactions nor are they subject to a regulatory scheme requiring such controls.[39]

The Commission posed a series of questions on this issue in the advance notice, asking specifically for comment on the minimum types of internal controls that an agricultural trade option merchant should have in place; the regulatory oversight mechanisms that would be necessary to assure implementation of such minimum levels of internal controls; and the most cost-effective means by which such internal controls could be implemented. Of the 13 commenters responding to these questions, the majority were of the opinion that, although prudent business practice necessitates use of internal controls, the Commission should not require them. Several commenters, however, supported Commission-mandated audits of agricultural trade option merchants. In this regard, one commenter, noting that state grain warehousing agencies may already require annual audits and that state and Federal warehouse regulators already visit every licensed grain dealer, suggested that the Commission consider developing audit procedures which existing agencies can implement on the Commission's behalf.

The Commission is proposing to mandate an internal controls requirement for agricultural trade option merchants similar to that applicable to FCMs. In mandating such a requirement, the Commission believes that agricultural trade option merchants will be made aware of the importance of maintaining internal controls without being subjected to regulations that are unduly burdensome. As proposed, agricultural trade option merchants will be required to be audited on a yearly basis in accordance with generally-accepted accounting principles and to inform the Commission within three business days of the discovery by a certified public accountant of any material inadequacies in the agricultural trade option merchant's internal controls. As proposed, the agricultural trade option merchant must file a written report with the Commission stating what steps have been taken or are being taken to correct the material inadequacy within five days of such a notification.

In addition, the Commission is proposing to require that the agricultural trade option merchant must maintain and preserve a written record of internal trading and supervisory controls. Such internal controls must include any systems and policies that the agricultural trade option merchant has for supervising, monitoring, reporting and reviewing trading activities in agricultural trade options, any policies it has for covering, hedging or managing risk created by trading activities, including a description of the reviews it conducts to monitor positions, and policies that relate to restrictions or limitations on trading activities.

*H. Regulatory Oversight*

Several commenters expressed the concern that the Commission would not be able to provide adequate regulatory oversight of trading in agricultural trade options. Specifically, commenters questioned whether the Commission's existing staff and financial resources would be sufficient to monitor trading activity effectively in such a decentralized market.

The Commission is proposing this three-year pilot program based, in part, on its belief that it will be joined in its efforts to promote a safe and responsible trading environment by many sectors of agriculture. During the Commission's public hearings, several producer associations and other agriculture industry associations pledged their assistance in promoting sound practices by both merchants and producers. The Commission has also determined to seek the assistance of NFA in undertaking responsibility for performing certain specified functions. These delegations should do much to aid the Commission in maintaining adequate levels of oversight, given its resource limitations. In addition, the various states and USDA conduct oversight of warehouses, and the Commission will cooperate with them in those efforts. The Commission will also devote an appropriate level of its resources to the conduct of sales practice audits and other forms of oversight.

In this regard, the Commission is seeking comment on the number of entities which may offer such contracts under the rules as proposed. Should this potentially create too large a burden on Commission resources, the Commission will explore additional delegations of oversight or other means of conserving its resources while providing adequate oversight coverage. The Commission is optimistic that, with these cooperative efforts, it will be able to foster the growth of responsible trading of agricultural trade options using its available resources and without harming existing programs or compromising its ability to achieve its overall regulatory mission. It would not proceed with the pilot program if it thought otherwise.

*I. Exemption for Sophisticated Entities*

Some commenters expressed the opinion that the prohibition on agricultural trade options should be lifted with few or no constraints. These commenters maintained that participants in these markets possess sufficient sophistication with respect to contracting so as not to require regulatory oversight. The agricultural sector, however, includes a diverse group of entities with different levels of sophistication, ranging from the small family farmer to highly sophisticated multinational corporations. Although any one of these individuals or entities might be entirely capable of understanding and managing the risks associated with entering into a trade option contract, only the larger and better financed entities will consistently have available the legal and financial resources needed to protect their interests in an unregulated environment. The Commission is of the view that an exemption from regulatory conditions similar to that available for trade options on other commodities may be appropriate for those entities having a very high net worth.[40] However, a greater level of regulatory protection is appropriate for transactions involving less well-financed entities. Congress adopted a similar approach for Commission determinations of the

[38] Of course, such information is a routine business record and is required to be maintained as such by the agricultural trade option merchant. This information would be available to the Commission by special call for information or through inspection on an as needed basis. The separate listing would be encouraged as a means of responding to a request for a total enumeration of this information relating to an in-depth analysis in connection with evaluating the pilot program.

[39] 62 FR 31381.

[40] Such an exemption would be from the requirements relating to agricultural trade options being proposed. Any such transaction, however, would not be exempt from the prohibition of fraud contained in 17 CFR 32.9.

availability of exemptive relief under section 4(c) of the Act.

In setting the eligibility requirements for exemption from these rules, the Commission considered the current levels of net worth or total worth required of eligible participants under parts 35 and 36 of its rules. Under parts 35 and 36, corporations or partnerships having total assets exceeding $10 million or net worth of $1 million in cases where the transaction was entered into in connection with the conduct of its business or to manage the risk of an asset or liability, are considered eligible for the exemption. Some have observed, however, that these qualifying amounts when applied to entities in agriculture are too low given the relatively large investment in land and equipment needed to operate a farm. The concern is that a relatively large number of individuals engaged in agriculture might meet these financial criteria based not so much on their investment sophistication and ability to gather and manage a sizable asset portfolio, but rather simply reflecting the need to acquire a threshold level of land and machinery to operate successfully a farm or agricultural enterprise. Accordingly, the Commission is proposing that, to qualify for this exemption, individuals or entities should have a net worth of at least $10 million.

In order to qualify for this proposed exemption, both counterparties must meet the eligibility requirements. If any one counterparty is not eligible for this exemptive relief, the counterparties must comply with all of the regulatory requirements.

*J. Relief for Exchange-Traded Instruments*

Representatives of several futures and option exchanges have expressed the concern that lifting the ban on agricultural trade options would put the exchanges at a competitive disadvantage. They note that exchanges are currently prohibited from offering options on physicals for these same commodities.[41] They further maintain that the current prohibition on exchange trading of options on physicals for the enumerated commodities restricts their ability to offer more flexible exchange-traded instruments that would be competitive with agricultural trade options.[42]

The Commission agrees that the restriction on options on physicals in these commodities can be removed. At the time of the pilot program for exchange-traded options on agricultural commodities, based on comments received from industry participants and the U.S. Department of Justice and taking into consideration the history of abuse in option markets, the Commission followed a cautious approach by not allowing options on physicals for agricultural commodities.[43] The Commission, however, did express its willingness to revisit the possibility of allowing exchange-traded options on physicals for agricultural commodities after gaining experience in the trading of options on agricultural futures. Given the success of exchange-traded options on futures, the lack of widespread abuse in these markets, the permissible flexibility of many option terms under current rules, and the exchanges' desire to experiment with offering new forms of more flexible, physical delivery option contracts, the Commission is proposing to amend § 33.4 to permit exchanges to trade options on physicals on the enumerated agricultural commodities.

## IV. Other Matters

*A. Paperwork Reduction Act (PRA)*

When publishing proposed rules, the PRA of 1995 (Pub. L. 104–13 (May 13, 1996)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the 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.

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 the proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this new collection, including these proposed rules, is as follows:

Average burden hours per response—5.359
Number of respondents—5105
Frequency of response—Daily

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.

*B. Regulatory Flexibility Act (RFA)*

The RFA, 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has not previously determined whether all or some agricultural trade option merchants should be considered ''small entities'' for purposes of the RFA and, if so, to analyze the economic impact on such entities. However, the Commission is proposing that one of the conditions for registration as an agricultural trade option merchant is maintenance of a minimum level of net worth. The Commission previously found that other entities which were required to maintain minimum levels of net capital were not small entities for purposes of the RFA. *See*, 47 FR 18618, 18619 (April 30, 1982).[44] The Commission has also found, however, that one category of Commission registrant—introducing brokers (IBs)—which is required to maintain a minimum level of net capital may include small entities for purposes of the RFA.[45] Nevertheless, in addition

[41] Commission rule 33.4 provides in part that ''The Commission may designate any board of trade located in the United States as a contract market for the trading of * * * options on physicals in any commodity regulated under the Act other than those commodities which are specifically enumerated in section 1a(3) of the Act * * * ''.

[42] Flex options on futures on the enumerated agriculture commodities have recently been proposed by exchanges and approved by the Commission under current rules. These options are flexible in terms of strike prices, last trading days, the underlying futures months, and the style of exercise—American or European. Additional types of flexible terms involving physical delivery would be permitted if the Commission's rule is amended.

[43] *See*, 49 FR 2752 (January 23, 1984).

[44] Specifically, in April 1982 the Commission found that FCMs were required to have a minimum net capital of $50,000.

[45] IBs are required to maintain minimum levels of net capital in the amount of $30,000. *See*, 61 FR 19177 (May 1, 1996).

to the $50,000 minimum net worth required for registration as an agricultural trade option merchant, such registrants must be in business in the underlying cash commodity so that they are able to take physical delivery on those option contracts. This will require that they have additional resources invested in order to qualify as an agricultural trade option merchant, in contrast to an IB whose additional investment beyond the minimum net capital may be relatively small. For this reason, the Commission believes that agricultural trade option merchants are more appropriately treated as not being small entities under the RFA. The Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed rules will remove a complete ban on the offer or sale of trade options on the agricultural commodities enumerated under the Act. The proposed rules permitting such transactions subject to the specified conditions therefore remove a burden for all entities, regardless of size.

**List of Subjects**

*17 CFR Part 3*

Administrative practice and procedure, Brokers, Commodity futures.

*17 CFR Part 32*

Commodity futures, Commodity options, Prohibited transactions and trade options.

*17 CFR Part 33*

Commodity futures, Consumer protection, Fraud.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1)(A), 4c, and 8a, 7 U.S.C. 2, 6c, and 12a, as amended, the Commission hereby proposes to amend parts 3, 32, and 33 of chapter I of title 17 of the Code of Federal Regulations as follows:

## PART 3—REGISTRATION

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

**Authority:** 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6c, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 60, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23; 5 U.S.C. 552, 552b.

2. New § 3.13 is proposed to be added to read as follows:

**§ 3.13 Registration of agricultural trade option merchants and their associated persons.**

(a) *Registration required.* It shall be unlawful for any person in the business of offering or selling the instruments listed in § 32.2 of this chapter to offer or to enter into transactions in such instruments except if registered as an agricultural trade option merchant or a person associated with such a registered agricultural trade option merchant under this section.

(b) *Duration of registration.* A person registered in accordance with the provisions of this section shall continue to be registered until the revocation or withdrawal of registration.

(c) *Conditions for registration.* Applicants for registration as an agricultural trade option merchant and its associated persons must meet the following conditions:

(1) The agricultural trade option merchant must have and maintain at all times net worth of at least $50,000 computed in accordance with generally accepted accounting principles.

(2) The agricultural trade option merchant must certify:

(i) That none of the natural persons who are principals of the agricultural trade option merchant, directly or indirectly through the beneficial ownership of ten percent or more of a principal which is a non-natural person, nor any of the natural persons who are associated persons is disqualified for the reasons listed in section 8a(2) and (3) of the Act; and

(ii) That such natural persons successfully complete the series 3 examination or another proficiency test administered by the National Futures Association.

(3) Provide access to any representative of the Commission, the U.S. Department of Justice, or the National Futures Association for the purpose of inspecting books and records.

(d) *Application for registration.* Application for registration as an agricultural trade option merchant and its associated persons must be made on the appropriate form specified by the NFA, in accordance with the instructions thereto. Such application:

(1) Must include the agricultural trade option merchant's most recent annual financial statements certified by an independent certified public accountant in accordance with generally accepted auditing standards prepared within the prior 12 months.

(2) Must include the fingerprints, on a fingerprint card obtained from the National Futures Association, of all natural persons who are principals, or the beneficial owners of ten percent or more of a principal which is a non-natural person, of the applicant, and of all natural persons who are to be associated persons of the agricultural trade option merchant and such other identifying background information as specified.

(3) Must include separate certification from each natural person that the person is not disqualified for any of the reasons listed in section 8a(2) and 8a(3) of the Act.

(4) Must include such other information as may be specified on the application form.

(5) This application must be supplemented to include changes in associated persons, a principal, or other required information or conditions.

(e) *Temporary licensing.* Notwithstanding any other provision of this part, the National Futures Association may grant a temporary license to any applicant for registration under this section upon filing of a complete application meeting all of the requirements of paragraph (d) of this section, subject to termination provisions of section 3.60 of this part, *Provided however,* that such temporary license shall terminate:

(1) Immediately upon failure by an applicant to respond to a written request by the Commission or the National Futures Association for clarification or supplementation of any information set forth in the application or for the resubmission of fingerprints.

(2) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under sections 6(e), 6b, or 6c(d) of the Act.

(3) Immediately upon failure to pay the full amount of a reparation order within the time permitted under section 14(f) of the Act.

(4) Five days after service upon the applicant of a notice by the Commission or the National Futures Association that the applicant may be found subject to a statutory disqualification from registration.

3. Section 3.34 is proposed to be amended by revising paragraphs (a), (d)(1), and (e)(1) to read as follows:

**§ 3.34 Mandatory ethics training for registrants.**

(a) Any individual registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage trading merchant, associated person, floor broker, floor trader, or agricultural trade option merchant under the Act must attend ethics training to ensure that he or she

understands his or her responsibilities to the public under the Act, including responsibilities to observe just and equitable principles of trade, rules, or regulations of the Commission, rules of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable federal or state law, rule or regulation.

* * * * *

(d) * * *

(1) Any individual granted registration under the Act as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, leverage transaction merchant, associated person, floor broker, floor trader or agricultural trade option merchant after April 26, 1993, who has not been duly registered under the Act at any time during the two year period immediately preceding the date such individual's application for registration was received by the National Futures Association, must attend training referred to in this section within six months after being granted registration, and thereafter every three years.

* * * * *

(e) Evidence of attendance at ethics training, including evidence of completion of videotape or electronic training, must be maintained in accordance with § 1.31 of this chapter by:

(1) An individual registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, or agricultural trade option merchant;

* * * * *

## PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

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

**Authority:** 7 U.S.C. 2, 6c and 12a.

5. Section 32.2 is proposed to be revised to read as follows:

### § 32.2 Prohibited transactions.

Notwithstanding the provisions of § 32.11, no person may offer to enter into, confirm the execution of, or maintain a position in, any transaction in interstate commerce involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice if the transaction is or is held out to be of the character of, or is commonly known to the trade as an ''option,'' ''privilege,'' ''indemnity,'' ''bid,'' ''offer,'' ''put,'' ''call,'' ''advance guarantee,'' or ''decline guarantee,'' except as provided under § 32.13 of this part.

6. New § 32.13 is proposed to be added to part 32 to read as follows:

### § 32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

(a) The provisions of § 32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with the purchase or sale of any commodity option on a physical commodity listed in § 32.2 by a person who is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) That person is registered with the Commission under § 3.13 of this chapter as an agricultural trade option merchant.

(2) The option offered by the agricultural trade option merchant is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and such producer, processor, or commercial user of, or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.

(3) The option can only be settled through physical delivery of the underlying commodity.

(4) To the extent that payment by the customer of the purchase price is made to the agricultural trade option merchant prior to option expiration or exercise, that amount shall be treated as belonging to the customer until option expiration or exercise as provided under § 32.6, *provided however,* that notwithstanding the last sentence of § 32.6(a), the full amount of such payment shall be treated as belonging to the option customer.

(5) Producers may not:

(i) Grant or sell a put option; or

(ii) Grant or sell a call option, except to the extent that such a call option is purchased or combined with a purchased or long put option position, and only to the extent that the customer's call option position does not exceed the customer's put option position in the amount of delivery quantity. *Provided, however,* that the options must be entered into simultaneously and expire simultaneously or at any time that one or the other option is exercised.

(6) All option contracts, including all terms and conditions, offered or sold pursuant to this section shall be in writing and shall contain terms relating to the following:

(i) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise;

(ii) The strike price(s) of the option contract;

(iii) The total quantity of commodity underlying the option contract;

(iv) The quality or grade of commodity to be delivered if the contract is exercised and any adjustments to price for deviations from stated quality or grade;

(v) The delivery location if the contract is exercised;

(vi) The separate elements comprising the purchase price to be charged, including the premium, markups on the premium, costs, fees and other charges; and

(vii) The additional costs, if any, in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges which may be incurred.

(7) Prior to the entry by a customer into the first option transaction with an agricultural trade option merchant, the agricultural trade option merchant shall furnish a summary disclosure statement to the option customer. The summary disclosure statement shall include:

(i) The following statements in boldface type on the first page(s) of the disclosure statement:

This brief statement does not disclose all of the risks and other significant aspects of trading in commodity trade options. You are encouraged to seek out as much information as possible from sources other than the person selling you this option about the use and risks of using option contracts before entering into this contract. The issuer of your option should be willing and able to answer clearly any of your questions. If this is not the case, contact someone else to find answers to your questions before entering into a contract. Sources of information include the Commodity Futures Trading Commission (a U.S. Government agency), the U.S. Department of Agriculture, the National Futures Association (a self-regulatory

association in the commodity futures industry), your state extension service, and various agricultural associations.

APPROPRIATENESS OF OPTION CONTRACTS

Option contracts may subject the user to a high degree of price risk including total loss of any funds you pay to the issuer of your option. You should carefully consider whether trading in such instruments is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances. The issuer of your option contract should be willing and able to explain the financial outcome of your option contract under all market conditions.

COSTS AND FEES ASSOCIATED WITH AN OPTION CONTRACT

All costs and obligations associated with your option contract including the premium, commissions, fees, costs associated with delivery if the option is exercised and any other charges which may be incurred should be specified in the terms of your option contract and are explained in this disclosure statement. Before entering into an option contract, you should obtain a clear explanation of all of these costs and fees and understand them.

BUSINESS USE OF TRADE OPTIONS

In order to comply with the law, you must be buying this option for business-related purposes. As such, the terms and structure of the contracts should relate to your activity or commitments in the underlying cash market. If a trade option is exercised, delivery of the commodity must occur. Delivery dates, grades, quantities, and delivery locations, which are specified in the contract, should relate to your ability to make or take delivery of the commodity. Any amendments allowed to the option contract must reflect changes to your activity or commitments in the underlying cash market or to reflect the carrying of inventory. Producers are not permitted to sell call options unless the producer is also entering into a put option contract at the same time with the same expiration date. In those situations, the contracts cannot give the person buying the call option the right to call for the delivery of an amount of commodity greater than the producer would have the right to deliver if he or she exercises the delivery option. Producers are also not permitted to sell put options, whether alone or in combination with a call option.

RISK OF FRAUD

You should be aware that trade options are offered in a relatively unregulated and decentralized environment, which may allow for a higher incidence of fraud than in a more regulated and restricted market. You should be aware that you may be able to obtain a similar contract or execute a similar strategy using an instrument offered on a more highly regulated futures exchange. Moreover, exchange products will likely be more transparent and the current prices on which are likely to be reported on a more regular basis. In addition, exchange options are highly liquid and may be offset at any time. In contrast, trade options legally may only be satisfied if exercised through physical delivery.

COUNTERPARTY PERFORMANCE RISK

If you are purchasing an option contract (*i.e., acquiring the right* to sell or purchase the commodity), be aware that you face the risk that the other party to the contract may not perform on its obligation to purchase or sell the commodity. If this occurs, you may lose any price protection the option contract would have offered you. You should take this risk into account in selecting an agricultural trade option merchant.

DISPUTE RESOLUTION

If a dispute should arise under the terms of this trade option contract, you may be able to use the reparations program run by the Commission in addition to any other dispute resolution forums provided to you under law or under the terms of your customer agreement. For more information on the Commission's Reparations Program contact: Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5250.

ACKNOWLEDGEMENT OF RECEIPT

The Commodity Futures Trading Commission requires that all customers receive and acknowledge receipt of a copy of this disclosure statement. The Commodity Futures Trading Commission does not intend this statement as a recommendation or endorsement of agricultural trade options. These commodity options have not been approved or disapproved by the Commodity Futures Trading Commission, nor has the Commission passed upon the accuracy or adequacy of this disclosure statement. Any representation to the contrary is a violation of the Commodity Exchange Act and Federal regulations;

(ii) The following additional information must be provided prior to entry by a customer into every option transaction with an agricultural trade option merchant:

(A) The procedure for exercise of the option contract, including the expiration date and latest time on that date for exercise;

(B) A description of the elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges, and the services to be provided for the separate elements comprising the purchase price;

(C) A description of any and all costs in addition to the purchase price which may be incurred by an option customer if the commodity option is exercised, including, but not limited to, the amount of storage, interest, commissions (whether denominated as sales commissions or otherwise) and all similar fees and charges which may be incurred;

(D) Where the full option premium or purchase price of the option is not collected up front or where through amendments to the option contract it is possible to lose more than the amount of the initial purchase price, a description of the worst possible financial outcome that could be suffered by the customer; and

(E) The following acknowledgment section:

I hereby acknowledge that I have received and understood this risk disclosure statement.

Date _____

Signature of Customer _____

(b) *Report of account information.* Registered agricultural trade option merchants must provide in writing to customers with open positions the following information:

(1) Within 24 hours of execution of an agricultural trade option confirmation of the transaction, including a copy of the written contract and all information required in paragraph (a)(6) of this section;

(2) Within 24 hours of a request by the customer, current commodity price quotes or other information relevant to the customer's position and account; and

(3) Monthly, a current account statement including a complete listing of all individual agricultural trade option transactions which clearly states the expiration date of each option and clearly distinguishes and draws attention to those options which will expire within the next month, all orders to enter into such transactions not yet filled, a current commodity price related to all open option positions or open orders, and the amount of any funds owed by, or to, the customer.

(c) *Recordkeeping.* Registered agricultural trade option merchants shall keep full, complete and systematic books and records together with all pertinent data and memoranda of or relating to such transactions, including customer solicitation and covering transactions, maintain such books and records for the period specified in § 1.31 of this chapter, and make such reports to the Commission as provided for in paragraphs (c) and (d) of this section and as the Commission may otherwise require by rule, regulation, or order. Such books and records shall be open at all times to inspection by any representative of the Commission, the Department of Justice, or the National Futures Association.

(d) *Reports.* Registered agricultural trade option merchants must file reports quarterly with the National Futures Association, in the form and manner specified by the National Futures Association and approved by the Commission, which shall contain the following information:

(1) By commodity and put, call or combined option:

(i) Total number of new contracts entered into during the reporting period;

(ii) Total quantity of commodity underlying new contracts entered into during the reporting period;

(iii) Total number of contracts outstanding at the end of the reporting period;

(iv) Total quantity of underlying commodity outstanding under option contracts at the end of the reporting period;

(v) Total premiums collected on options during the reporting period;

(vi) The value of all fees, commissions, or other charges other than option premiums, collected on trade options during the reporting period;

(vii) Total number of options exercised during the reporting period;

(viii) Total quantity of commodity underlying the exercise of options during the reporting period.

(2) Total number of customers by commodity with open option contracts at the end of the reporting period.

(e) *Special calls.* Upon special call by the Commission for information relating to agricultural trade options offered or sold on the dates specified in the call, each agricultural trade option merchant shall furnish to the Commission within the time specified the following information as specified in the call:

(1) All positions and transactions in agricultural trade options including information on the identity of agricultural trade option customers.

(2) All positions and transactions for future delivery or options on contracts for future delivery or on physicals on all contract markets.

(3) All positions and transactions in cash commodities, their products, and by-products.

(f) *Internal controls.* (1) Each agricultural trade option merchant registered with the Commission shall prepare, maintain and preserve information relating to its written policies, procedures, or systems concerning the agricultural trade option merchant's internal controls with respect to market risk, credit risk, and other risks created by the agricultural trade option merchant's activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in agricultural trade options; policies for hedging or managing risk created by trading activities in agricultural trade options, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities.

(2) The financial statements of the agricultural trade option merchant must on an annual basis be audited by a certified public accountant in accordance with generally accepted auditing standards.

(3) The agricultural trade option merchant must file with the Commission a copy of its certified financial statements within 90 days after the close of the agricultural trade option merchant's fiscal year.

(4) The agricultural trade option merchant must perform a reconciliation of its books at least monthly.

(5) The agricultural trade option merchant:

(i) Must report immediately if its net worth falls below the level prescribed in § 3.13 of this chapter, and must report within three days discovery of a material inadequacy in its financial statements by the independent public accountant or any state or federal agency performing an audit of its financial statements promptly to the Commission and National Futures Association by facsimile, telegraphic or other similar electronic notice; and

(ii) Within five business days after giving such notice, the agricultural trade option merchant must file a written report with the Commission stating what steps have been taken or are being taken to correct the material inadequacy.

(6) If the agricultural trade option merchant's net worth falls below the level prescribed in § 3.13(c)(1) of this chapter, it must immediately cease offering or entering into new option transactions and must notify customers having premiums which the agricultural trade option merchant is holding under paragraph (a)(4) of this section that such customers can obtain an immediate refund of that premium amount, thereby closing the option position.

(g) *Exemption.* (1) The provisions of this section shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by products thereof, and that such producer processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such, and that both parties to the contract have a net worth of not less than 10 million dollars.

(2) *Provided, however,* that § 32.9 of this part continues to apply to such option transactions.

## PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

7. The authority citation for part 33 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 4, 6, 6a, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 13a, 13a–1, 13b, 19, and 21.

8. The first sentence of the introductory text of § 33.4 is proposed to be revised to read as follows:

### § 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery or for options on physicals in any commodity regulated under the Act, when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

* * * * *

Issued this 29th day of October 1997, in Washington, DC, by the Commodity Futures Trading Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–29037 Filed 11–3–97; 8:45 am]

BILLING CODE 6351–01–P

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Parts 707 and 874

**RIN 1029–AB94**

## Enhancing Abandoned Mine Land (AML) Reclamation

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Advanced notice of proposed rulemaking; notice of public meetings.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing times and locations of meetings open to the public to discuss its early draft of a proposal for adding to the reclamation of abandoned mine lands already being accomplished under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking to involve the public in the development of a proposed rule

through a request for written comments to the draft proposal as well as discussions and exchange of information at meetings such as are being announced here. OSM has sent the draft proposal to State and Tribal representatives and to industry, local and national citizen and environmental groups.

**DATES:** OSM will hold meetings on: November 13 from 4:00 to 8:00 p.m. in Charleston, WV and from 1:00 to 8:00 p.m. in Denver, CO; November 17 at 6:00 p.m. in Madisonville, KY and at 7:00 p.m. in St. Clairsville, OH; November 18 at 6:00 p.m. in Hazard, KY; November 19 from 8:00 to 10:00 p.m. in Johnstown, PA and from 5:30 to 7:30 p.m. in St. Paul, VA; and November 24 at 6:30 p.m. in Crossville, TN.

**ADDRESSES:** The meetings will be held at the Heart o'Town Hotel, 1000 Washington Street East in Charleston, WV; at the Executive Tower Hotel (Adams Room), 1405 Curtis Street in Denver, CO; at the Days Inn, 1900 Lantaff Blvd. in Madisonville, KY; at the Hampton Inn (Pinto Room), 51130 National Road in St. Clairsville, OH; at the Hazard City Hall, 700 Main Street in Hazard, KY; at the Holiday Inn, 250 Market Street in Johnstown, PA; at the Oxbow Center, 16620 East Riverside Drive in St. Paul, VA; and at the Ramada Inn, Highway 27 at I–40 in Crossville, TN. Any individual who requires special accommodation to attend a meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**FOR FURTHER INFORMATION CONTACT:** D.J. Growitz, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Washington, D.C. 20240; telephone (202) 208–2634. E-mail: dgrowitz@osmre.gov.

**SUPPLEMENTARY INFORMATION:** OSM is seeking to increase reclamation under Title IV of SMCRA. In a **Federal Register** notice published on October 24, 1997, (62 FR 55365) OSM announced the availability of the early draft of a proposal to enhance reclamation under the abandoned mine land (AML) program. OSM also announced in that notice that it would hold meetings with interested persons to discuss the draft proposal and publish a schedule for those meetings in the **Federal Register**. When a proposed rule is developed, it will be published in the **Federal Register** for public comment in accordance with the requirements of the Administrative Procedure Act, and public hearings will be held on request.

The proposal may be obtained from FAX ON DEMAND by calling 202–219–1703 and following the instructions on the recorded message. The October 24 **Federal Register** notice contains additional background information.

Dated: October 30, 1997.

**Ruth E. Stokes,**

*Acting Assistant Director, Program Support.*

[FR Doc. 97–29133 Filed 11–3–97; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Parts 2 and 3

**[Docket No. 970428100–7256–02]**

**RIN 0651–AA87**

## Miscellaneous Changes to Trademark Trial and Appeal Board Rules

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Proposed rule; notice of hearing and reopening of comment period.

**SUMMARY:** The Patent and Trademark Office (PTO) will hold a public hearing, and reopen the comment period, on changes to certain rules and practices of the Trademark Trial and Appeal Board that were proposed in June of 1997 (62 FR 30802, June 5, 1997). Interested members of the public are invited to testify at the public hearing and to submit written comments on these proposed changes.

**DATES:** The public hearing will be held on Wednesday, December 10, 1997, beginning at 9:00 a.m.

Those wishing to present oral testimony at the hearing must request an opportunity to do so no later than Friday, December 5, 1997.

Speakers may provide a written copy of their testimony for inclusion in the record of the proceedings no later than Wednesday, December 17, 1997.

Written comments will be accepted by the PTO until December 10, 1997.

Written comments and transcripts of the hearing will be available for public inspection on or about Wednesday, January 7, 1998.

**ADDRESSES:** The hearing will be held on Wednesday, December 10, 1997, beginning at 9:00 a.m. in the Commissioner's Conference Room, located on the 9th floor of Crystal Park 2, 2121 Crystal Drive, Arlington, Virginia 22202.

Requests to testify should be sent to Ellen Seeherman by telephone at (703) 308–9300, ext. 206, by facsimile transmission at (703) 308–9333, or by mail marked to her attention and addressed to Assistant Commissioner for Trademarks, Box TTAB–No Fee, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

Written comments may be sent by mail addressed to Assistant Commissioner for Trademarks, Box TTAB–No Fee, 2900 Crystal Drive, Arlington, Virginia 22202–3513, marked to the attention of Ellen J. Seeherman. Written comments may also be sent by facsimile transmission to (703) 308–9333, marked to the attention of Ellen J. Seeherman.

Written comments and transcripts of the hearing will be maintained for public inspection in Suite 900, on the 9th Floor of the South Tower Building, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

**FOR FURTHER INFORMATION CONTACT:** Ellen J. Seeherman, Administrative Trademark Judge, Trademark Trial and Appeal Board, by telephone at (703) 308–9300, ext. 206, or by mail marked to her attention and addressed to Assistant Commissioner for Trademarks, Box TTAB–No Fee, 2900 Crystal Drive, Arlington, Virginia 22202–3513 or by facsimile transmission marked to her attention and sent to (703) 308–9333.

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking to amend certain rules governing practice before the Trademark Trial and Appeal Board was published in the **Federal Register** on June 5, 1997 (62 FR 30802) and in the Official Gazette on June 24, 1997 (1199 TMOG 88). A number of the comments made in response to that notice suggested that a public hearing be held on the proposed rules changes. Accordingly, the PTO has decided to hold a public hearing on the proposed rules changes on December 10, 1997. Moreover, some trade organizations expressed the concern that, because the comment period occurred during the summer months, some practitioners and other interested parties and entities were not aware of the proposed amendments. Accordingly, the PTO has decided to reopen the comment period. All comments previously submitted will be considered together with any additional written comments which are submitted by December 10, 1997.

It should be noted that, in view of the comments already received, the PTO has determined that it will not adopt the proposed changes to Sections 2.120(d) and 2.120(h) regarding limiting the number of requests for production of documents and the requests for admission which may be served.

Dated: October 29, 1997.

**Bruce A. Lehman,**

*Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.*

[FR Doc. 97–29161 Filed 11–3–97; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 225 and 252

**[DFARS Case 97–D028]**

## Defense Federal Acquisition Regulation Supplement; Commercial Ball or Roller Bearings—Components of Noncommercial Items

**AGENCY:** Department of Defense (DOD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove domestic source restrictions on commercial ball or roller bearings that are components of noncommercial end items.

**DATES:** Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 5, 1998, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T)DP(DAR). IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 97–D028 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D028 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0131.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This rule proposes amendments to DFARS 225.7019–2 and the associated clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, to remove domestic source restrictions on commercial ball or roller bearings that are components of noncommercial end items. This is consistent with the existing language at DFARS 212.504(a)(xviii), which provides that 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods, is not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components. The language at 212.504(a)(xviii) was added to the DFARS as part of the implementation of Section 8003 of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 430), which provides that the Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for commercial items.

### B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An initial regulatory flexibility analysis has been prepared and is summarized as follows: The objective of this rule is to be consistent with the existing regulations relating to the acquisition of commercial items and commercial components. The rule will apply to all offerors and contractors offering noncommercial end items that contain commercial ball or roller bearings as components, and all suppliers of such commercial bearings, but will have no effect if another exception to 10 U.S.C. 2534 already applies. There is no data available to estimate the number of small entities involved, because DD Form 350 data does not provide information regarding components. However, the rule will not affect acquisitions using simplified acquisition procedures, as an exception covering such acquisitions already exists. Furthermore, the restriction has already been waived for bearings from qualifying countries. The proposed rule will remove the requirement for offerors and contractors to track the origin of commercial ball or roller bearings used as components in noncommercial end items. The proposed rule may increase competition from naufacturers of foreign, nonqualifying country commercial ball or roller bearings in affected acquisitions.

Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D028 in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq*.

### List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR parts 225 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 225—FOREIGN ACQUISITION

2. Section 225.7019–2 is amended by revising paragraph (a)(2) to read as follows:

**225.7019–2 Exceptions.**

(a) * * *

(2) Purchases of commercial items (end items or components) incorporating ball or roller bearings or purchases of ball or roller bearings that are commercial components of noncommercial items.

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7016 is amended by revising the clause date and paragraphs (c)(1)(i) and (f) to read as follows:

**252.225–7016 Restriction on acquisition of ball and roller bearings.**

* * * * *

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (XXX 19XX)

* * * * *

(c)(1) * * *

(i) The end items or components containing ball or roller bearings are commercial items or the bearings are commercial components of noncommercial items; or

* * * * *

(f) The Contractor agrees to insert this clause, including this paragraph (f), in every subcontract and purchase order issued in performance of this contract, unless items acquired in the subcontract or purchase order are—

(1) Commercial items; or

(2) Items that do not contain ball or roller bearings.

(End of clause)

[FR Doc. 97–29122 Filed 11–3–97; 8:45 am]

BILLING CODE 5000–04–M

# Notices

**Federal Register**

Vol. 62, No. 213

Tuesday, November 4, 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

### Food and Consumer Service

### Food Stamp Program: Agency Information Collection Activities: Proposed Collection; Comment Request; Waivers Under Section 6(o) of the Food Stamp Act

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. Section 6(o) of the Food Stamp Act of 1977, as amended by Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines ''that the area in which the individuals reside has an unemployment rate of over 10 percent, or does not have a sufficient number of jobs to provide employment for the individuals.'' As required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that the United States Department of Agriculture (USDA) can make the required determination as to the area's unemployment rate or sufficiency of available jobs. This collection of information is therefore necessary in order to obtain waivers of the food stamp time limit.

**DATES:** Written comments must be received on or before January 5, 1998.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Margaret Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Ms. Batko at (703) 305–2486. The internet address is: Margaret__Batko@FCS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Consumer Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 720, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Ms. Batko at (703) 305–2516.

**SUPPLEMENTARY INFORMATION:**

*Title:* Waiver Guidance for Food Stamp Time Limits.

*OMB Number:* 0584–0479.

*Form Number:* Not a form.

*Expiration Date:* 6/30/97.

*Type of Request:* Reinstatement with change of a previously approved information collection for which approval has expired.

*Abstract:* Section 824 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, 110 Stat. 2323 (7 U.S.C. 2015) (PRWORA) establishes a time limit for the receipt of food stamp benefits for certain able-bodied adults who are not working. The provision authorizes the Secretary of Agriculture, upon a State agency's request, to waive the provision for any group of individuals if the Secretary determines ''that the area in which the individuals reside has an unemployment rate of over 10 percent; or (ii) does not have a sufficient number of jobs to provide employment for the individuals.'' As required in the statute, in order to receive a waiver the State agency must submit sufficient supporting information so that USDA can make the required determination as to the area's unemployment rate or sufficiency of available jobs. This collection of information is therefore necessary in order to obtain waivers of the food stamp time limit. Since the provision was implemented (the effective date of the legislation was August 22, 1996), the Food and Consumer Service (FCS) has received requests for waivers from 44 State agencies. A total of 102 separate waiver requests have been received by FCS through September 19, 1997. Each request submitted by a State agency to exempt individuals residing in specified areas is considered by FCS to be a separate request, since the requested exemptions may be based on different criteria, are submitted at different times, and require separate analysis. A significant number of State agencies have submitted multiple requests. Since these waivers must be renewed on an annual basis and new ones may be submitted to reflect changing labor market conditions, FCS anticipates receipt of approximately the same number of waiver requests every year.

*Affected Public:* State and Local governments.

*Estimated Number of Respondents:* 44.

*Estimated Number of Responses:* 100.

*Estimated Time per Response:* 20 hours.

*Estimated Total Burden:* 2000 hours.

Dated: October 23, 1997.

**Yvette Jackson,**

*Acting Administrator, Food and Consumer Service.*

[FR Doc. 97–29129 Filed 11–3–97; 8:45 am]

BILLING CODE 3410–30–U

## DEPARTMENT OF AGRICULTURE

## Rural Telephone Bank

## Determination of the 1997 Fiscal Year Interest Rates on Rural Telephone Bank Loans

**AGENCY:** Rural Telephone Bank, USDA.

**ACTION:** Notice of 1997 fiscal year interest rates determination.

**SUMMARY:** In accordance with 7 CFR 1610.10, the Rural Telephone Bank (Bank) fiscal year 1997 cost of money rates have been established as follows: 5.98% and 6.54% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987, through December 21, 1987, where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 1997 under Bank loans approved in fiscal years 1988 through 1991 shall bear interest at the rate of 5.98% (the liquidating account rate). All loan advances made during fiscal year 1997 under Bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 6.54% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 1997 for the liquidating account and the financing account are provided in Tables 1a and 1b. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 5.98% and 6.54%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

**FOR FURTHER INFORMATION CONTACT:** Jonathan P. Claffey, Acting Director, Advanced Telecommunications Services Staff, Rural Utilities Service, room 2919, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720–0530.

**SUPPLEMENTARY INFORMATION:** The Federal Credit Reform Act of 1990 (''Credit Reform'') (2 U.S.C. 661a, *et seq.*) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two cost of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 1997 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 1997 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuance of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

During fiscal year 1997, the Bank was authorized to pay the following dividends: The dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act (RE Act); no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 7.25%.

### Sources and Costs of Funds—Liquidating Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1997. Advances for the purchase of Class B stock and cash purchases for Class B stock were $1,415,341. Rescissions of loan funds advanced for Class B stock amounted to $229,765. Thus, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $1,185,576 ($1,415,341–229,765). The amount received by the Bank in fiscal year 1997 from the issuance of Class C stock was $13,840.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 1997. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 1997 loan advances from the liquidating account over amounts received from issuance of stocks, debentures, and other obligations amounted to $31,403,171. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is provided in Table 2a. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Pub. L. 100–203, and are listed in 7 CFR 1610.10(c) and Table 2a herein.

### Sources and Costs of Funds—Financing Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1997. Advances for the purchase of Class B stock and cash purchases for Class B stock were $1,754,108. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $1,754,108. The amount received by the Bank in fiscal year 1997 from the issuance of Class C stock was $74.

During fiscal year 1997, issuance of debentures or any other obligations related to the financing account were $32,575,943 at an interest rate of 6.89%.

The excess of fiscal year 1997 loan advances from the financing account over amounts received from issuance of stocks, debentures, and other obligations amounted to $38,601. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the financing account is provided in Table 2b. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: October 27, 1997.

**Adam Golodner,**

*Deputy Governor, Rural Telephone Bank.*

BILLING CODE 3410–15–P

## TABLE 1a – LIQUIDATING ACCOUNT
## RURAL TELEPHONE BANK
## COST OF MONEY RATE

| Source of Bank Funds | Amount | Cost Rate | Amount X Cost Rate | (Amount X Rate) / Advances |
|---|---|---|---|---|
| FY 1997 Issuance of Class A Stock | $0 | 2.00% | $0 | 0.0000% |
| FY 1997 Issuance of Class B Stock | $1,185,576 | 0.00% | $0 | 0.0000% |
| FY 1997 Issuance of Class C Stock | $13,840 | 7.25% | $1,003 | 0.0031% |
| FY 1997 Issuance of Debentures and Other Obligations | $0 | -- | $0 | 0.0000% |
| Excess of Total Advances Over FY 1997 Issuance | $31,403,171 | 6.20% | $1,946,997 | 5.9719% |
| Total FY 1997 Advances | $32,602,587 | CALCULATED COST OF MONEY RATE | | 5.98% |
| | | **MINIMUM COST RATE ALLOWABLE** | | 5.00% |

## TABLE 1b – FINANCING ACCOUNT
## RURAL TELEPHONE BANK
## COST OF MONEY RATE

| Source of Bank Funds | Amount | Cost Rate | Amount X Cost Rate | (Amount X Rate) / Advances |
|---|---|---|---|---|
| FY 1997 Issuance of Class A Stock | $0 | 2.00% | $0 | 0.0000% |
| FY 1997 Issuance of Class B Stock | $1,754,108 | 0.00% | $0 | 0.0000% |
| FY 1997 Issuance of Class C Stock | $74 | 7.25% | $5 | 0.0000% |
| FY 1997 Issuance of Debentures and Other Obligations: | $32,575,943 | 6.89% | $2,244,483 | 6.5306% |
| Excess of Total Advances Over FY 1997 Issuance | $38,601 | 6.53% | $2,521 | 0.0073% |
| Total FY 1997 Advances | $34,368,726 | CALCULATED COST OF MONEY RATE | | 6.54% |
| | | **MINIMUM COST RATE ALLOWABLE** | | 5.00% |

## TABLE 2a
## RURAL TELEPHONE BANK
## HISTORICAL COST OF MONEY
## LIQUIDATING ACCOUNT

| Fiscal Year | Bank Cost of Money | Bank Loan Advances | Advances X Cost Rate | (Advances X Cost Rate) / Total Advances |
|---|---|---|---|---|
| 1974 | 5.01% | $111,022,574 | $5,562,231 | 0.240% |
| 1975 | 5.85% | $130,663,197 | $7,643,797 | 0.330% |
| 1976 | 5.33% | $99,915,066 | $5,325,473 | 0.230% |
| 1977 | 5.00% | $80,907,425 | $4,045,371 | 0.175% |
| 1978 | 5.87% | $142,297,190 | $8,352,845 | 0.361% |
| 1979 | 5.93% | $130,540,067 | $7,741,026 | 0.334% |
| 1980 | 8.10% | $199,944,235 | $16,195,483 | 0.700% |
| 1981 | 9.46% | $148,599,372 | $14,057,501 | 0.607% |
| 1982 | 8.39% | $112,232,127 | $9,416,275 | 0.407% |
| 1983 | 6.99% | $93,402,836 | $6,528,858 | 0.282% |
| 1984 | 6.55% | $90,450,549 | $5,924,511 | 0.256% |
| 1985 | 5.00% | $72,583,394 | $3,629,170 | 0.157% |
| 1986 | 5.00% | $71,852,383 | $3,592,619 | 0.155% |
| 1987 | 5.00% | $51,974,938 | $2,598,747 | 0.112% |
| 1988 | 5.00% | $119,488,367 | $5,974,418 | 0.258% |
| 1989 | 5.00% | $97,046,947 | $4,852,347 | 0.210% |
| 1990 | 5.00% | $107,694,991 | $5,384,750 | 0.233% |
| 1991 | 5.43% | $163,143,075 | $8,858,669 | 0.383% |
| 1992 | 6.14% | $84,940,822 | $5,215,366 | 0.225% |
| 1993 | 6.05% | $84,605,366 | $5,118,625 | 0.221% |
| 1994 | 6.15% | $54,530,897 | $3,353,650 | 0.145% |
| 1995 | 6.04% | $35,967,133 | $2,172,415 | 0.094% |
| 1996 | 6.05% | $30,965,187 | $1,873,394 | 0.081% |
| TOTAL ADVANCES | | $2,314,768,138 | COST OF MONEY RATE | 6.20% |

## TABLE 2b
## RURAL TELEPHONE BANK
## HISTORICAL COST OF MONEY
## FINANCING ACCOUNT

| Fiscal Year | Bank Cost of Money | Bank Loan Advances | Advances X Cost Rate | (Advances X Cost Rate) / Total Advances |
|---|---|---|---|---|
| 1992 | 7.38% | $4,056,250 | $299,351 | 0.180% |
| 1993 | 6.35% | $23,839,200 | $1,513,789 | 0.910% |
| 1994 | 6.40% | $56,838,902 | $3,637,690 | 2.186% |
| 1995 | 6.88% | $37,161,517 | $2,556,712 | 1.536% |
| 1996 | 6.42% | $44,536,621 | $2,859,251 | 1.718% |
| TOTAL ADVANCES | | $166,432,490 | COST OF MONEY RATE | 6.53% |

[FR Doc. 97–29097 Filed 11–3–97; 8:45 am]
BILLING CODE 3410–15–C

## ASSASSINATION RECORDS REVIEW BOARD

### Formal Determinations, Additional Releases, and Corrections

**AGENCY:** Assassination Records Review Board.

**ACTION:** Notice.

**SUMMARY:** The Assassination Records Review Board (Review Board) met in a closed meeting on October 14, 1997, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

**FOR FURTHER INFORMATION CONTACT:** Kevin G. Tiernan, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

**SUPPLEMENTARY INFORMATION:** This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. § 2107.9(c)(4)(A) (1992). On October 14, 1997, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

### Notice of Formal Determinations

For each document, the number of postponements sustained immediately follows the record identification number, followed, where appropriate, by the date the document is scheduled to be released or re-reviewed.

FBI Documents: Postponed in Part

124–10073–10252; 2; 10/2017
124–10148–10013; 2; 10/2017
124–10163–10123; 2; 10/2017
124–10173–10395; 13; 10/2017
124–10200–10415; 3; 10/2017
124–10200–10421; 6; 10/2017
124–10200–10422; 1; 10/2017
124–10208–10468; 4; 10/2017
124–10208–10469; 8; 10/2017
124–10208–10473; 2; 10/2017
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180–10147–10245; 1; 10/2017

## Notice of Formal Determinations on Records Re-Reviewed

The following documents were reviewed previously and released with postponements by the Review Board. The Review Board has re-reviewed the records and has made new formal determinations as follows.

CIA Documents: Opened in Full

104–10014–10016; 5; 0; n/a

HSCA Documents: Opened in Full

180–10078–10463; 1; 0; n/a
180–10080–10433; 3; 0; n/a
180–10086–10012; 1; 0; n/a

CIA Documents: Postponed in Part

104–10005–10220; 1; 1; 10/2017
104–10006–10121; 87; 56; 06/2006
104–10006–10284; 2; 7; 10/2017
104–10009–10059; 6; 4; 05/2001
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180–10110–10002; 3; 50; 09/2006
180–10110–10029; 30; 85; 10/2002
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180–10110–10123; 0; 29; 10/2007
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180–10143–10090; 70; 23; 05/2001
180–10143–10098; 3; 1; 10/2017

## Notice of Additional Releases

After consultation with appropriate Federal agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full:

124–10196–10451; 124–10196–10452; 124–10196–10453; 124–10196–10454; 124–10200–10416; 124–10200–10417; 124–10200–10418; 124–10200–10420; 124–10200–10423; 124–10200–10424; 124–10208–10470; 124–10208–10471; 124–10208–10472; 124–10208–10474; 124–10208–10475; 124–10208–10476; 124–10208–10477; 124–10208–10478; 124–10208–10479; 124–10208–10485; 124–10212–10477; 124–10212–10478; 124–10212–10480; 124–10212–10481; 124–10212–10489; 124–10212–10494; 124–10215–10198; 124–10215–10200; 124–10215–10201; 124–10215–10203; 124–10215–10206; 124–10215–10208; 124–10215–10209; 124–10215–10210; 124–10215–10211; 124–10215–10212; 124–10215–10214; 124–10215–10215; 124–10215–10217; 124–10215–10218; 124–10215–10219; 124–10215–10220; 124–10215–10408; 124–10215–10409; 124–10215–10411; 124–10215–10412; 124–10215–10416; 124–10215–10417; 124–10215–10418; 124–10215–10419; 124–10215–10420; 124–10215–10421; 124–10215–10422; 124–10215–10423; 124–10215–10426; 124–10215–10428; 124–10215–10429; 124–10215–10430; 124–10215–10431; 124–10215–10436; 124–10215–10437; 124–10215–10438; 124–10215–10439; 124–10215–10440; 124–10215–10441; 124–10215–10443; 124–10215–10444; 124–10215–10445; 124–10215–10447; 124–10215–10448; 124–10215–10449; 124–10215–10454; 124–10215–10456; 124–10215–10457; 124–10215–10458; 124–10215–10459; 124–10215–10460; 124–10215–10461; 124–10215–10462; 124–10215–10463; 124–10215–10464; 124–10215–10465; 124–10215–10466; 124–10215–10467; 124–10215–10468; 124–10215–10469; 124–10215–10470; 124–10215–10471; 124–10215–10472; 124–10215–10473; 124–10215–10474; 124–10215–10475; 124–10215–10476; 124–10215–10477; 124–10215–10478; 124–10215–10479; 124–10215–10480; 124–10215–10481; 124–10215–10482; 124–10215–10484; 124–10215–10485; 124–10215–10486; 124–10215–10487; 124–10215–10488; 124–10215–10489; 124–10215–10490; 124–10215–10491; 124–10215–10492; 124–10215–10493; 124–10215–10494; 124–10215–10495; 124–10215–10498; 124–10217–10410; 124–10217–10411; 124–10217–10412; 124–10217–10413; 124–10217–10414; 124–10217–10415; 124–10217–10417; 124–10217–10418; 124–10218–10132; 124–10218–10136; 124–10218–10145; 124–10218–10321; 124–10218–10323; 124–10218–10327; 124–10218–10328; 124–10218–10330; 124–10218–10333; 124–10218–10334; 124–10218–10336; 124–10218–10337; 124–10218–10338; 124–10218–10339; 124–10218–10344; 124–10218–10346; 124–10218–10347; 124–10218–10387; 124–10218–10388; 124–10218–10389; 124–10218–10392; 124–10218–10394; 124–10218–10395; 124–10218–10405; 124–10218–10406; 124–10218–10407; 124–10218–10410; 124–10218–10411; 124–10218–10432; 124–10218–10443; 124–10219–10138; 124–10219–10139; 124–10219–10140; 124–10219–10145; 124–10219–10146; 124–10219–10147; 124–10219–10149; 124–10219–10150; 124–10219–10151; 124–10219–10152; 124–10219–10154; 124–10219–10156; 124–10219–10158; 124–10219–10159; 124–10219–10160; 124–10219–10161; 124–10219–10162; 124–10219–10164; 124–10219–10165; 124–10219–10261; 124–10219–10262; 124–10219–10263; 124–10219–10264; 124–10219–10265; 124–10219–10266; 124–10219–10268; 124–10219–10269; 124–10219–10270; 124–10219–10271; 124–10219–10272;

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After consultation with appropriate Federal agencies, the Review Board announces that the following Central Intelligence Agency records are now being opened in full:

104–10059–10081; 104–10059–10225; 104–10061–10001; 104–10061–10011; 104–10061–10014; 104–10061–10018; 104–10061–10019; 104–10061–10020; 104–10061–10026; 104–10061–10031; 104–10061–10050; 104–10061–10052; 104–10061–10056; 104–10061–10062; 104–10061–10067; 104–10061–10068; 104–10061–10069; 104–10061–10070; 104–10061–10071; 104–10061–10073; 104–10061–10077; 104–10061–10078; 104–10061–10088; 104–10061–10123; 104–10061–10136; 104–10061–10200; 104–10061–10212; 104–10061–10213; 104–10061–10215; 104–10061–10220; 104–10061–10232; 104–10061–10238; 104–10061–10275; 104–10061–10301; 104–10061–10308; 104–10061–10314; 104–10061–10318; 104–10061–10322; 104–10061–10323; 104–10061–10326; 104–10061–10341; 104–10061–10374; 104–10061–10378; 104–10061–10389; 104–10061–10444; 104–10061–10445; 104–10062–10007; 104–10062–10009; 104–10062–10014; 104–10062–10016; 104–10062–10017; 104–10062–10018; 104–10062–10022; 104–10062–10029; 104–10062–10033; 104–10062–10035; 104–10062–10037; 104–10062–10045; 104–10062–10049; 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104–10092–10343; 104–10092–10346; 104–10092–10347; 104–10092–10348; 104–10092–10349; 104–10092–10351; 104–10092–10352; 104–10092–10353; 104–10092–10357; 104–10092–10358; 104–10092–10359; 104–10092–10360; 104–10092–10362; 104–10092–10363; 104–10092–10364; 104–10092–10365; 104–10092–10367; 104–10092–10368; 104–10092–10370; 104–10092–10371; 104–10092–10372; 104–10092–10380; 104–10092–10381; 104–10092–10383; 104–10092–10384; 104–10092–10385; 104–10092–10386; 104–10092–10389; 104–10092–10390; 104–10092–10391; 104–10092–10393; 104–10092–10395; 104–10092–10396; 104–10092–10397; 104–10092–10398; 104–10092–10400; 104–10092–10402; 104–10092–10403; 104–10092–10404; 104–10092–10405; 104–10092–10406; 104–10092–10407; 104–10092–10408; 104–10092–10409; 104–10092–10410; 104–10092–10412; 104–10092–10413; 104–10092–10414; 104–10092–10415; 104–10092–10416; 104–10092–10417; 104–10092–10418; 104–10092–10419; 104–10092–10420; 104–10092–10421; 104–10092–10422; 104–10092–10424; 104–10092–10425; 104–10092–10426; 104–10092–10427; 104–10092–10428; 104–10092–10432; 104–10092–10433; 104–10092–10434; 104–10092–10435; 104–10092–10436; 104–10092–10437; 104–10092–10438; 104–10092–10439; 104–10092–10440; 104–10092–10441; 104–10092–10442; 104–10092–10443; 104–10092–10444; 104–10092–10445; 104–10092–10447; 104–10092–10448; 104–10092–10449; 104–10093–10000; 104–10093–10001; 104–10093–10002; 104–10093–10003; 104–10093–10004; 104–10093–10005; 104–10093–10006; 104–10093–10007; 104–10093–10008; 104–10093–10012; 104–10093–10013; 104–10093–10014; 104–10093–10015; 104–10093–10016; 104–10093–10017; 104–10093–10018; 104–10093–10019; 104–10093–10021; 104–10093–10022; 104–10093–10023; 104–10093–10427; 104–10095–10315; 104–10095–10322; 104–10096–10023; 104–10096–10042; 104–10096–10064; 104–10096–10068; 104–10096–10070; 104–10096–10103; 104–10096–10110; 104–10096–10159; 104–10096–10301; 104–10097–10269; 104–10097–10270; 104–10097–10271; 104–10097–10272; 104–10097–10288; 104–10097–10370; 104–10097–10375; 104–10097–10380; 104–10097–10383; 104–10097–10385; 104–10097–10386; 104–10097–10387; 104–10097–10389; 104–10097–10391; 104–10097–10392; 104–10097–10393; 104–10097–10395; 104–10097–10396; 104–10097–10397; 104–10097–10398; 104–10097–10399; 104–10097–10400; 104–10097–10404; 104–10097–10405; 104–10097–10406; 104–10097–10409; 104–10097–10410; 104–10097–10411; 104–10097–10415; 104–10097–10417; 104–10097–10418; 104–10097–10420; 104–10097–10421; 104–10097–10422; 104–10097–10424; 104–10097–10427; 104–10097–10428; 104–10097–10429; 104–10097–10431; 104–10097–10432; 104–10097–10433; 104–10097–10436; 104–10097–10437; 104–10097–10438; 104–10097–10439; 104–10097–10441; 104–10097–10442; 104–10097–10446; 104–10098–10000; 104–10098–10001; 104–10098–10002; 104–10098–10003; 104–10098–10004; 104–10098–10005; 104–10098–10006; 104–10098–10008; 104–10098–10013; 104–10098–10015; 104–10098–10016; 104–10098–10017; 104–10098–10018; 104–10098–10019; 104–10098–10020; 104–10098–10021; 104–10098–10023; 104–10098–10024; 104–10098–10025; 104–10098–10026; 104–10098–10027; 104–10098–10028; 104–10098–10029; 104–10098–10032; 104–10098–10035; 104–10098–10037; 104–10098–10038; 104–10098–10039; 104–10098–10040; 104–10098–10041; 104–10098–10042; 104–10098–10043; 104–10098–10044; 104–10098–10045; 104–10098–10047; 104–10098–10048; 104–10098–10050; 104–10102–10018; 104–10102–10019; 104–10102–10020; 104–10102–10022; 104–10102–10023; 104–10102–10024; 104–10102–10026; 104–10102–10027; 104–10102–10029; 104–10102–10030; 104–10102–10031; 104–10102–10033; 104–10102–10034; 104–10102–10035; 104–10102–10036; 104–10102–10041; 104–10102–10042; 104–10102–10044; 104–10102–10046; 104–10102–10048; 104–10102–10052; 104–10102–10055; 104–10102–10056; 104–10102–10059; 104–10102–10060; 104–10102–10062; 104–10102–10064; 104–10102–10068; 104–10102–10083; 104–10102–10094; 104–10102–10134; 104–10102–10135; 104–10102–10153; 104–10102–10190; 104–10102–10225; 104–10102–10242; 104–10102–10249; 104–10102–10250; 104–10106–10001; 104–10106–10003; 104–10106–10005; 104–10106–10008; 104–10106–10240; 104–10106–10254; 104–10107–10188

After consultation with appropriate Federal agencies, the Review Board announces that the following House Select Committee on Assassinations records are now being opened in full:

180–10071–10074; 180–10071–10328; 180–10080–10057; 180–10080–10166; 180–10080–10183; 180–10092–10191; 180–10094–10372; 180–10095–10358; 180–10095–10360; 180–10095–10363; 180–10095–10364; 180–10095–10367; 180–10095–10369; 180–10095–10372; 180–10095–10373; 180–10095–10377; 180–10095–10378; 180–10095–10379; 180–10095–10380; 180–10095–10382; 180–10095–10385; 180–10097–10108; 180–10100–10497; 180–10100–10498; 180–10102–10371; 180–10104–10461; 180–10105–10076; 180–10105–10274; 180–10108–10323; 180–10111–10026; 180–10113–10008; 180–10115–10033; 180–10115–10041; 180–10118–10070; 180–10118–10097; 180–10127–10001; 180–10127–10002; 180–10128–10000; 180–10131–10019; 180–10131–10321; 180–10131–10333

After consultation with appropriate Federal agencies, the Review Board announces that the following Army records are now being opened in full:

198–10004–10000; 198–10004–10001; 198–10004–10002; 198–10004–10003; 198–10004–10004; 198–10004–10005; 198–10004–10006; 198–10004–10007; 198–10004–10008; 198–10004–10009; 198–10004–10010; 198–10004–10011; 198–10004–10012; 198–10004–10013; 198–10004–10014; 198–10004–10015; 198–10004–10016; 198–10004–10017; 198–10004–10018; 198–10004–10019; and 198–10004–10020

After consultation with appropriate Federal agencies, the Review Board announces that the following Joint Chiefs of Staff records are now being opened in full:

202–10002–10000; 202–10002–10001; 202–10002–10002; 202–10002–10003; 202–10002–10004; 202–10002–10005; 202–10002–10006; 202–10002–10007; 202–10002–10008; 202–10002–10009; 202–10002–10010; 202–10002–10011; 202–10002–10012; 202–10002–10013; 202–10002–10014; 202–10002–10015; 202–10002–10016; 202–10002–10017; 202–10002–10018; 202–10002–10019; 202–10002–10020; 202–10002–10021; 202–10002–10022; 202–10002–10023; 202–10002–10025; 202–10002–10026; 202–10002–10027; 202–10002–10028; 202–10002–10029; 202–10002–10030; 202–10002–10031; 202–10002–10032; 202–10002–10033; 202–10002–10034; 202–10002–10035; 202–10002–10036; 202–10002–10037; 202–10002–10038; 202–10002–10039; 202–10002–10040; 202–10002–10041; 202–10002–10042; 202–10002–10043; 202–10002–10044; 202–10002–10045; 202–10002–10046; 202–10002–10047; 202–10002–10048; 202–10002–10049; 202–10002–10050; 202–10002–10051; 202–10002–10052; 202–10002–10053; 202–10002–10054; 202–10002–10055; 202–10002–10056; 202–10002–10057; 202–10002–10058; 202–10002–10059; 202–10002–10060; 202–10002–10061; 202–10002–10062; 202–10002–10063; 202–10002–10064; 202–10002–10065; 202–10002–10066; 202–10002–10067; 202–10002–10068; 202–10002–10069; 202–10002–10070; 202–10002–10071; 202–10002–10072; 202–10002–10073; 202–10002–10074; 202–10002–10075; 202–10002–10076; 202–10002–10077; 202–10002–10078; 202–10002–10079; 202–10002–10080; 202–10002–10081; 202–10002–10082; 202–10002–10083; 202–10002–10084; 202–10002–10085; 202–10002–10086; 202–10002–10087; 202–10002–10088; 202–10002–10089; 202–10002–10090; 202–10002–10091; 202–10002–10092; 202–10002–10093; 202–10002–10094; 202–10002–10095; 202–10002–10096; 202–10002–10097; 202–10002–10098; 202–10002–10099; 202–10002–10100; 202–10002–10101; 202–10002–10102; 202–10002–10103; 202–10002–10105; 202–10002–10106; 202–10002–10107; 202–10002–10108; 202–10002–10109; 202–10002–10110; 202–10002–10111; 202–10002–10112; 202–10002–10113; 202–10002–10114; 202–10002–10115; 202–10002–10116; 202–10002–10117

**Notice of Corrections**

On December 16–17, 1996, the Review Board made formal determinations that were published in the January 9, 1997 **Federal Register** (FR Doc. 97–492, 62 FR 1311). For that notice make the following corrections:

| Record number | Previously published | Correct data |
|---|---|---|
| 104–10068–10187 | 18; 8; 05/1997 | 17, 9, 12/2006. |

On January 29–30, 1997, the Review Board made formal determinations that were published in the February 21, 1997 **Federal Register** (FR Doc. 97–4226, 62 FR 7998). For that notice make the following corrections:

| Record number | Previously published | Correct data |
|---|---|---|
| 104–10068–10166 | 22; 8; 01/2007 | 22; 9; 01/2007. |
| 180–10110–10121 | 3; 4; 10/2017 | 3; 6; 10/2017. |

The Review Board action of January 30, 1997 (published in the February 21 **Federal Register**, FR Doc. 97–4226, 62 FR 7998) on a record incorrectly identified as 104–10066–10226 was vacated at this meeting. It has been properly identified as 104–10066–10232. The Board decisions for 104–10066–10226 and 104–10066–10232 have been included with the Board's formal determinations in this Notice.

On March 13–14, 1997, the Review Board made formal determinations that were published in the April 2, 1997 **Federal Register** (FR Doc. 97–8408, 62 FR 15650). For that notice make the following corrections:

| Record number | Previously published | Correct data |
|---|---|---|
| 104–10065–10128 | 7; 8; 03/2007 | 7; 19; 03/2007. |

On June 10, 1997, the Review Board made formal determinations that were published in the June 30, 1997 **Federal Register** (FR Doc. 97–16979, 62 FR 35147). For that notice make the following corrections:

| Record number | Previously published | Correct data |
|---|---|---|
| 104–10072–10123 | 27; 10/2017 | 28; 10/2017. |
| 180–10143–10164 | 31; 10/2017 | 5; 10/2017. |
| 180–10143–10176 | 5; 10/2017 | 6; 10/2017. |
| 180–10144–10211 | 13; 10/2017 | 14; 10/2017. |

On July 9, 1997, the Review Board made formal determinations that were published in the August 5, 1997 **Federal Register** (FR Doc. 97–20542, 62 FR 42095). For that notice make the following corrections:

| Record number | Previously published | Correct data |
|---|---|---|
| 104–10068–10164 | 8; 08/2008 | 10; 08/2008. |

On August 5, 1997, the Review Board made formal determinations that were published in the August 26, 1997 **Federal Register** (FR Doc. 97–22606, 62 FR 45221). For that notice make the following corrections:

| Record number | Previously published | Correct data |
|---|---|---|
| 104–10092–10033 | 4; 10/2017 | 5; 10/2017. |
| 104–10098–10377 | 18; 10/2017 | 20; 10/2017. |
| 180–10143–10473 | 3; 10/2017 | 4; 10/2017. |

On September 17, 1997, the Review Board made formal determinations that were published in the October 7, 1997 **Federal Register** (FR Doc. 97–26462, 62 FR 52321). For that notice make the following corrections:

| Record number | Previously published | Correct data |
|---|---|---|
| 104–10098–10377 | 20; 10/2017 | 21; 10/2017. |

In the October 7, 1997 **Federal Register** (FR Doc. 97–26462, 62 FR 52321) record number 104–10054–10130 was incorrectly published as an additional release-in-full. This document will be processed at a future meeting.

Dated: October 28, 1997.

**T. Jeremy Gunn,**

*Executive Director.*

[FR Doc. 97–29040 Filed 11–3–97; 8:45 am]

**BILLING CODE 6118–01–P**

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

In the Matter of: Ben H. Attia, also known as Adnan Attia, individually with an address at 1614 Nine Island Boulevard, Miami Beach, FL 33134 and doing business as General Polyphase, Inc., with an address at 15 Rue de Kamel Attaturk 1001 Tunis, Tunisia, (Respondents).

## Recommended Decision and Order

### Decision and Order

The Administrative Law Judge (ALJ) has entered a Recommended Decision and Order in the above-referenced matter. As provided by Section 766.22 of the Export Administration Regulations (15 CFR Parts 730–774 (1997)) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. App. 2401–2420 (1991 & Supp. 1997)) (the Act),[2] the Recommended Decision and Order has been referred to me for final action.

On April 16, 1996, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), issued a charging letter initiating an administrative proceeding against Ben H. Attia, also known as Adnan Attia, individually and doing business as General Polyphase, Inc. (hereinafter collectively referred to as Attia). The charging letter alleged that Attia committed three violations of the former Regulations.[3]

Specifically, the charging letter alleged that, on or about July 31, 1992, Attia exported 22 ballistic shields from the United States to Tunisia without obtaining from BXA the validated license Attia knew or had reason to know was required, in violation of Sections 787.4(a) and 787.6 of the former Regulations, and that in connection with the unauthorized export described above, Attia made false or misleading statements of material fact to a U.S. Government agency in connection with the preparation, submission, issuance, use or maintenance of a Shipper's Export Declaration, defined by the former Regulations as an export control document, in violation of Section 787.5(a) of the former Regulations.

The charging letter was served on Attia on April 20, 1996. Attia failed to answer or otherwise respond to the charging letter within 30 days, as required by Section 787.2 of the former Regulations.[4] Pursuant to the default procedures set forth in Section 766.7 of the Regulations, BXA moved that the ALJ find the facts to be as alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter served on Attia. The ALJ also found, based on those facts, that Attia violated Sections 787.4(a), 787.5(a), and 787.6 of the former Regulations by exporting ballistic shields from the United States to Tunisia without obtaining from the Department the validated license Attia knew or had reason to know was required by the Regulations, and by making false or misleading statements of material fact to a U.S. government agency in connection with the preparation, submission, issuance, use or maintenance of an export control document.

The ALJ also recommended that the appropriate penalty to be imposed against Attia for these violations is a denial, for a period of 15 years, of all of Attia's privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving commodities, software or technology exported or to be exported from the United States and subject to the Regulations.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the Administrative Law Judge.

*Accordingly, it is therefore ordered:*

*First,* that, for a period of 15 years from the date of this Order, Ben H. Attia, also known as Adnan Attia, individually with an address at 1614 Nine Island Boulevard, Miami Beach, FL 33134, and doing business as General Polyphase, Inc., with an address at 15 rue de Kamel Attaturk, 1001 Tunis, Tunisia, and all successors, assignees, officers, representatives, agents and employees, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

*Second,* that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person it such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third,* that, after notice and opportunity for comment as provided in

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[1] The Regulations were restructured and reorganized effective April 24, 1996 (61 FR 12714, March 25, 1996). Those Regulations, now codified at 15 CFR Parts 730–774, establish the procedures that apply to this matter.

[2] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp., p. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. § § 1701–1706 (1991 & Supp. 1997)).

[3] The Regulations governing the violations at issue are found in the 1992 version of the Code of Federal Regulations (15 CFR Parts 768–799 (1992)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations.

[4] At the time BXA issued its charging letter against Attia, the former Regulations applied to administrative proceedings. Since that time, as noted in footnote 1, BXA published revised regulations, effective April 24, 1996, which govern the procedures now applicable to the matters set forth in the charging letter.

Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

*Fourth,* that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

*Fifth,* that a copy of this Order shall be served on Attia and on BXA, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: October 30, 1997.

**William A. Reinsch,**

*Under Secretary for Export Administration.*

[FR Doc. 97–29144 Filed 11–3–97; 8:45 am]

BILLING CODE 3510–DT–M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Minority Business Development Center Applications: Atlanta, GA

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice; revised dates.

**SUMMARY:** The Minority Business Development Agency is revising the announcement to solicit competitive applications to operate its Atlanta, GA Minority Business Development Center program to change the closing and start dates. The solicitation was originally published in the **Federal Register** on Wednesday, October 1, 1997, 62 FR 51454.

**DATES:** The revised closing is December 31, 1997, and the revised start date is April 1, 1998.

**PRE-APPLICATION CONFERENCE:** For the exact date, time and place, contact the Atlanta Regional Office at (404) 730–3300.

**ADDRESSES:** Mail applications to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th & Constitution Avenue, NW, Room 5073, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Robert Henderson at (404) 730–3300.

(Catalog of Federal Domestic Assistance: 11.800 Minority Business Development Center Program)

Dated: October 28, 1997.

**Donald L. Powers,**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 97–29106 Filed 11–3–97; 8:45 am]

BILLING CODE 3510–21–M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Native American Business Development Center Applications: Cherokee

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice; revised dates.

**SUMMARY:** The Minority Business Development Agency is revising the announcement to solicit competitive applications to operate its Cherokee Native American Business Development Center program to change the closing and start dates. The solicitation was originally published in the **Federal Register** on Wednesday, October 1, 1997, 62 FR 51457.

**DATES:** The revised closing is December 31, 1997, and the revised start date is April 1, 1998.

**PRE-APPLICATION CONFERENCE:** For the exact date, time and location contact the Atlanta Regional Office at (404) 730–3300.

**ADDRESSES:** Mail applications to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th & Constitution Avenue, NW, Room 5073, Washington, DC. 20230.

**FOR FURTHER INFORMATION CONTACT:** Robert Henderson at (404) 730–3300.

(Catalog of Federal Domestic Assistance: (11.801 Native American Program)

Dated: October 28, 1997.

**Donald L. Powers,**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 97–29108 Filed 11–3–97; 8:45 am]

BILLING CODE 3510–21–M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Native American Business Consultant Applications: Nationwide

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice; revised dates.

**SUMMARY:** The Minority Business Development Agency is revising the announcement to solicit competitive applications to operate its Native American Business Consultant program to change the closing and start dates and to notify interested parties of a pre-application conference. The solicitation was originally published in the **Federal Register** on Wednesday, October 1, 1997, 62 FR 51456.

**DATES:** The revised closing is December 31, 1997, an the revised start date is April 1, 1998. The date of the pre-application conference is November 20, 1997, at 10:00 a.m.

**ADDRESSES:** The pre-application conference will be held at the U.S. Department of Commerce, Minority Business Development Agency, 14th & Constitution Avenue, NW, Room 5045, Washington, D.C. 20230. Mail applications to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th & Constitution Avenue, NW, Room 5073, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Joe Hardy at (202) 482–2366.

(Catalog of Federal Domestic Assistance: 11.801 Native American Program)

Dated: October 28, 1997.

**Donald L. Powers,**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 97–29105 Filed 11–3–97; 8:45 am]

BILLING CODE 3510–21–M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Native American Business Development Center Applications: Northwest

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice; revised dates.

**SUMMARY:** The Minority Business Development Agency is revising the announcement to solicit competitive applications to operate its Northwest Native American Business Development Center program to change the closing and start dates The solicitation was originally published in the **Federal Register** on Wednesday, October 1, 1997, 62 FR 51438.

**DATES:** The revised closing is January 2, 1998, and the revised start date is April 1, 1998.

**PRE-APPLICATION CONFERENCE:** For the exact date, time and pace, contact the

San Francisco Regional Office at (415) 744–3001.

**ADDRESSES:** Mail applications to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th & Constitution Avenue, NW, Room 5073, Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Melda Cabrera at (415) 744–3001.

(Catalog of Federal Domestic Assistance: 11.801 Native American Program)

Dated: October 28, 1997.

**Donald L. Powers,**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 97–29107 Filed 11–3–97; 8:45 am]

**BILLING CODE 3510–21–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 101497D]**

### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Offshore Cetacean Take Reduction Plan Environmental Assessment

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS has prepared an Environmental Assessment (EA) on the alternatives being considered for implementation of the Atlantic Offshore Cetacean Take Reduction Plan. NMFS is requesting comments on the EA before it is finalized.

**DATES:** Written comments must be received on or before December 4, 1997.

**ADDRESSES:** Copies of the EA or the draft Atlantic Offshore Cetacean Take Reduction Plan may be obtained from Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by calling (301) 713-2322.

Written comments should be submitted to Chief, Marine Mammal Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Victoria Cornish, Office of Protected Resources, (301) 713-2322.

**SUPPLEMENTARY INFORMATION:** Section 118(f) of the Marine Mammal Protection Act (MMPA) requires NMFS to establish a Take Reduction Team (TRT) to prepare a draft Take Reduction Plan (TRP) designed to assist in the recovery or to prevent the depletion of each strategic marine mammal stock that interacts with certain fisheries. The immediate goal of a TRP is to reduce, within 6 months of its implementation, the mortality and serious injury of strategic stocks incidentally taken in the course of commercial fishing operations to below the Potential Biological Removal (PBR) levels established for such stocks.

The U.S. Atlantic, Caribbean, Gulf of Mexico pelagic drift gillnet fishery for swordfish, tuna, and shark interacts with several strategic marine mammal stocks, including long-finned and short-finned pilot whales, common dolphins, Atlantic spotted dolphins, the offshore stock of bottlenose dolphin, humpback whales, northern right whales, and sperm whales. The U.S. Atlantic, Caribbean, Gulf of Mexico pelagic longline fishery for swordfish, tuna, and shark interacts with two strategic marine mammal stocks: Pilot whales and Atlantic spotted dolphins (62 FR 3005, January 21, 1997). These stocks are considered strategic under the MMPA because they are listed as either an endangered or threatened species under the Endangered Species Act or because the level of human-caused mortality is greater than their PBR levels.

NMFS established the Atlantic Offshore Cetacean TRT on May 23, 1996 (61 FR 25846) to prepare a draft plan aimed at reducing bycatch of the strategic marine mammals stocks taken as bycatch in the U.S. Atlantic pelagic drift gillnet and longline fisheries. The Team submitted a draft Atlantic Offshore Cetacean Take Reduction Plan to NMFS on November 25, 1996.

NMFS has prepared an EA on the alternatives being considered for implementation of the final Plan. The EA addresses four alternatives: (1) A no-action alternative, (2) adoption of the draft plan as submitted by the Team, (3) adoption of a modified plan, with a marine mammal bycatch limit for drift gillnets, and (4) adoption of a modified plan, with a drift gillnet gear prohibition.

This assessment considers information that was not available to the Team at the time of their deliberations. This new information has resulted in the development of Alternatives 3 and 4, which are based on take reduction strategies discussed by the team while they were developing their draft plan. NMFS is making this EA available to the public, with a discussion of the new information and the rationale for the development of Alternatives 3 and 4, to provide an opportunity for public consideration and comment before regulations to implement a TRP for the drift gillnet and longline fisheries are proposed. As a result, this EA does not indicate a preferred alternative or identify a proposed action for implementation of the plan. After the close of the public comment period on this EA, NMFS will identify the preferred alternative for reducing incidental takes of marine mammals in these fisheries and request public comments on these proposed regulations.

A brief description of the take reduction strategies in each alternative is as follows:

*Alternative 1: Status Quo, or No Action, Alternative*

The no-action alternative would maintain existing regulations for both the pelagic drift gillnet and longline fisheries. This alternative would allow continued mortality and serious injury of strategic marine mammal stocks in these fisheries at a level above each stock's PBR level, which is in violation of section 118 of the MMPA.

*Alternative 2: Take Reduction Plan, as Drafted by the Atlantic Offshore Cetacean Take Reduction Team*

This alternative would adopt the Team's draft plan as submitted to NMFS on November 25, 1997. This plan would prohibit fishing in right whale critical habitat areas by both the drift gillnet and longline fisheries. This plan would regulate the drift gillnet fishery using the following strategies: (1) 100 percent marine mammal observer coverage, (2) limited entry for the swordfish drift gillnet fishery, (3) prohibition of drift gillnet gear south of Hudson Canyon from December 1 through May 31, and (4) a set allocation designed to reduce the derby nature of the fishery. In the longline fishery, the following regulatory strategies would be implemented: (1) Length-of-gear limit on pelagic longline gear from August to November in the Mid-Atlantic Bight, (2) reduction in maximum soak time in the Mid-Atlantic Bight during August-November by hauling gear in the order it was set, and (3) a requirement that longliners move after one entanglement with a marine mammal. In addition to these regulatory changes, the Team's draft plan included several non-regulatory strategies which were not considered in the preparation of the EA. Non-regulatory measures recommended by the team primarily focus on NMFS' long-term research, monitoring, and management objectives which would not be implemented by regulation in the near future and are an extension of actions currently underway to

implement the broad management goals of the MMPA, Magnuson-Stevens Fishery Conservation and Management Act, and the Atlantic Tunas Convention Act.

*Alternative 3: Modified Plan, with Marine Mammal Bycatch Limit for the Drift Gillnet Fishery*

This alternative would modify the Team's draft plan to include a marine mammal bycatch limit for the drift gillnet fishery. Under this alternative, the following combination of measures are proposed for the drift gillnet fishery: (1) Limited entry to the drift gillnet fishery, (2) prohibition of drift gillnet gear south of Hudson Canyon year-round, (3) prohibition on the use of drift gillnet gear from November 1 through July 31, (4) 100 percent marine mammal observer coverage, (5) mandatory education workshops for all vessel operators, and (6) a per-vessel marine mammal bycatch limit. The longline fishery would be subject to the same regulations specified in Alternative 2, with the following exceptions: (1) The areas subject to regulation would be expanded to include the Northeast Coastal area and (2) educational workshops would be mandatory for all vessel operators.

*Alternative 4: Modified Plan, with Prohibition of Drift Gillnet Gear*

This alternative would modify the team's draft plan to include a ban on the use of drift gillnet gear to target swordfish, tuna, and shark, except where otherwise authorized (i.e., the southeast U.S. shark gillnet fishery). This alternative would adopt the longline fishery take reduction strategies outlined in Alternative 3.

Dated: October 29, 1997.

**Patricia A. Montanio,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–29160 Filed 11–3–97; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 102797C]**

### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Florida/Alabama Habitat Protection Advisory Panel (AP).

**DATES:** The meeting will be held on Thursday, November 20, 1997, and is scheduled to begin at 9:00 a.m. and adjourn at 3:00 p.m.

**ADDRESSES:** The meetings will be held at the at the Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL 33609; telephone: 813–281–8900.

*Council address*: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Jeff Rester, Habitat Specialist, Gulf States Marine Fisheries Commission; telephone: 601–875–5912.

**SUPPLEMENTARY INFORMATION:** At this meeting, the AP will discuss an update on the Fenholloway River, and the expansion of U.S. 1 in Monroe County. The AP will also hear reports on the status of completion of the Essential Fish Habitat (EFH) guidelines being developed by NMFS; and of completion of a generic amendment by the Council which describes EFH as required by the Sustainable Fisheries Act. An overview of the Florida Marine Research Institute's mapping of fisheries habitat, and an update of the status of artificial reefs in Florida will also be presented.

A copy of the agenda can be obtained by calling 813–228–2815. Although other issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal AP action during this meeting. AP action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by November 13, 1997.

Dated: October 29, 1997.

**Bruce C. Morehead,**

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

[FR Doc. 97–29159 Filed 11–3–97; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 102497D]**

### South Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Habitat Committee and Habitat Research and Monitoring Subgroup, Joint Habitat Committee and Habitat Advisory Panel chairmen and agency representatives to the Habitat Advisory Panel, Marine Reserves Committee, Information and Education (I & E) Committee, Mackerel Committee, Scientific and Statistical Selection Committee (CLOSED SESSION), Advisory Panel Selection Committee (CLOSED SESSION), Personnel Committee (CLOSED SESSION), Snapper Grouper Committee, and a Scoping Meeting of the Atlantic Coastal Cooperative Statistics Program. A Council Session will also be held.

**DATES:** The meetings will be held from November 17-21, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Duke University Nicholas School of the Environment Marine Laboratory, 135 Duke Marine Lab Road, Beaufort, NC 28516; telephone: (919) 504-7504.

*Council address*: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

**FOR FURTHER INFORMATION CONTACT:** Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan.buchanan@noaa.gov

**SUPPLEMENTARY INFORMATION:**

### Meeting Dates

*November 17, 1997, 1:30 p.m. to 5:00 p.m.—Habitat Committee/Habitat Research and Monitoring Subgroup;*

The Committee will observe the Subgroup workshop. The Subgroup will review present research efforts to identify and describe essential fish habitat and determine fishery and non-fishery impacts on these habitats and discuss the structure of the research section of the Habitat Fishery Management Plan (FMP).

*November 17, 1997, 5:00 p.m. until all business is complete —Atlantic Coastal*

*Cooperative Statistics Program Scoping Meeting*;

The purpose of this scoping meeting is to provide the public an opportunity to express their views on ways to improve commercial and recreational fisheries data collection.

*November 18, 1997, 8:30 a.m. to 12:00 noon—Joint Habitat Committee and Habitat Advisory Panel chairmen and state & Federal representatives to the Habitat Advisory Panel*;

The Committee, chairmen and representatives will review the status of the Habitat FMP and comprehensive Habitat Amendment, review fishing threats to essential fish habitat, determine fishery impacts on habitat, and develop management options for the Habitat FMP.

*November 18, 1997, 1:30 p.m. to 3:30 p.m.—Marine Reserves Committee*;

The Committee will review recent activities in the country that have focused on marine reserves, such as meetings, workshops and research, review the status of the Oculina Bank closed area, hear a report from NMFS law enforcement on fishing vessel monitoring systems and the potential for enforcing marine reserves, and discuss a Council approach for addressing marine reserves in the South Atlantic.

*November 18, 1997, 3:30 p.m. to 5:30 p.m.—Information and Education (I & E) Committee*;

The Committee will review current Council I & E activities, hear an overview of the NMFS Southeast Regional Office plan for fishery I & E activities, and discuss additional and/or future I & E activities.

*November 19, 1997, 8:30 a.m. to 12:00 noon—Mackerel Committee*;

The Committee will review items for Amendment 9 to the Coastal Migratory Pelagics FMP proposed by the Gulf of Mexico Fishery Management Council, discuss the Gulf Council's response to the South Atlantic Council's request for true lead in dolphin and wahoo management, and hear the status of Amendment 8 to the Coastal Migratory Pelagics FMP and the 1997-98 framework seasonal adjustments.

*November 19, 1997, 1:30 p.m. to 2:30 p.m.—Scientific and Statistical Selection (SSC) Committee (CLOSED SESSION)*;

The Committee will review resumes and develop recommendations for appointment to SSC.

*November 19, 1997, 2:30 p.m. to 4:00 p.m.—Advisory Panel Selection Committee (CLOSED SESSION)*;

The Committee will review applications and develop recommendations for appointments to advisory panels.

*November 19, 1997, 4:00 p.m. to 5:00 p.m.—Personnel Committee (CLOSED SESSION)*;

The Committee will discuss Council personnel issues.

*November 20, 1997, 8:30 a.m. to 12:00 noon—Snapper Grouper Committee*;

The Committee will hear status reports on Amendments 8 and 9 to the Snapper Grouper FMP, hear stock assessment reports on scamp and vermilion snapper species, hear the snapper grouper logbook report, a report on the economic survey results, and review special management zone requests and develop recommendations.

*November 20, 1997, 1:30 p.m. to 2:30 p.m.—Snapper Grouper Committee continued*;

*November 20, 1997, 3:00 p.m. to 5:30 p.m.—Council Session*;

The full Council will convene to hear comments from Rear Admiral Norman T. Saunders, Commander of the 7th Coast Guard District, and to begin development of the Magnuson-Stevens Act Generic Amendment (the Council will review definitions of overfishing and rebuilding timeframes for each FMP, develop new definitions and rebuilding timeframes where required, and review other Magnuson-Stevens Act requirements).

*November 21, 1997, 8:30 a.m. to 5:00 p.m.—Council Session*;

The full Council will convene to hear committee reports at the following times.

*8:30 a.m. to 9:00 a.m.—Habitat Committee report*;

The Council will approve Habitat Amendment management options.

*9:00 a.m. to 9:30 a.m.—Snapper Grouper Committee report*;

The Council will take action on special management zone requests.

*9:30 a.m. to 10:00 a.m.—Marine Reserves Committee report*;

*10:00 a.m. to 10:45 a.m.—Mackerel Committee report*;

The Council will take action on Gulf Council proposed actions for Coastal Migratory Pelagics Amendment 9.

*10:45 a.m. to 11:00 a.m.—I & E Committee report*;

*11:00 a.m. to 11:15 a.m.—SSC Selection Committee report (CLOSED SESSION)*;

The Council will approve new SSC members.

*11:15 a.m. to 11:45 a.m.—Advisory Panel Selection Committee report (CLOSED SESSION)*;

The Council will approve new advisory panel members.

*11:45 a.m. to 12:00 noon—Personnel Committee report (CLOSED SESSION)*;

*1:30 p.m. to 5:00 p.m.*, the Council will hear a report from the U.S. Fish and Wildlife Service on the Federal aid program and the South Florida restoration project; modify the Bycatch Reduction Device Protocol; hear reports on the status of the investigation of the four golden crab permits; the golden crab framework action; the Operations Plan meeting, the Dolphin/Wahoo FMP request; progress of the Calico Scallop FMP development; the Highly Migratory Species longline Advisory Panel meeting; the Highly Migratory Species billfish advisory Panel meeting; and the Atlantic Coastal Cooperative Statistics Program before making Council recommendations. The Council will also hear agency and liaison reports and discuss other business.

Although other issues not contained in this agenda may come before this Council/Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council/Committee action during this meeting. Council/Committee action will be restricted to those issues specifically identified in the agenda listed in this notice.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 10, 1997.

Dated: October 29, 1997.

**Gary C. Matlock,**

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

[FR Doc. 97–29098 Filed 10–30–97; 10:28 am]

**BILLING CODE 3510–22–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 29, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

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

**FOR FURTHER INFORMATION CONTACT:** Helen L. LeGrande, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68244, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

October 29, 1997.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 5, 1997, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 336/836 | 73,429 dozen. |
| 338 | 384,557 dozen. |
| 339 | 1,605,326 dozen. |
| 340 | 380,182 dozen. |
| 341 | 227,016 dozen. |
| 342 | 105,410 dozen. |
| 345 | 64,942 dozen. |
| 347/348/847 | 877,233 dozen. |
| 351/851 | 83,354 dozen. |
| 359–C/659–C [2] | 424,824 kilograms. |
| 359–V [3] | 141,608 kilograms. |
| 633/634/635 | 654,785 dozen. |
| 638/639/838 | 2,027,771 dozen. |
| 659–S [4] | 147,834 kilograms. |
| Group II | |
| 400–469, as a group | 1,713,865 square meters equivalent. |
| 445/446 | 94,004 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.97–29119 Filed 11–3–97; 8:45 am]

**BILLING CODE 3510–DR–F**

## COMMODITY FUTURES TRADING COMMISSION

### Applications of the Chicago Board of Trade for Designation as a Contract Market in PCS Catastrophe Single-Event Insurance Options for the Entire U.S. (National) Plus Eight Regional and State-Based Contracts Covering the Northeast, West, California, Texas, East, Southeast, Midwest, and Florida

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity option contracts.

**SUMMARY:** The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in nine options on PCS catastrophe single-event insurance. The options include a national contract plus eight regional and state-based contracts representing the Northeast, West, California, Texas, East, Southeast, Midwest, and Florida. The applications were submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

**DATES:** Comments must be received on or before November 19, 1997.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CBT PCS catastrophe single event insurance options.

**FOR FURTHER INFORMATION CONTACT:** Please contact Mike Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, 20581, telephone (202) 418–5279. Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov

**SUPPLEMENTARY INFORMATION:** The contracts were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of applications for contract market designation (62 FR 10434). Under those procedures, the contracts, absent any contrary action by the Commission, may be deemed approved at the close of business on December 11, 1997, 45 days after receipt of the applications. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as

provided for applications submitted under the regular review procedures.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under ''What's Pending''.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 29, 1997.

**John R. Mielke,**

*Acting Director.*

[FR Doc. 97–29134 Filed 11–3–97; 8:45 am]

BILLING CODE 6351–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 98–1]**

## Black & Decker Corporation; Complaint

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Publication of a complaint under the Consumer Product Safety Act.

**SUMMARY:** Under Provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** complaints which it issues. Published below is a complaint in the matter of Black & Decker Corporation.

**SUPPLEMENTARY INFORMATION:** The text of the Complaint appears below.

Dated: October 29, 1997.

**Sadye E. Dunn,**

*Secretary.*

[CPSC Docket No. 98–1]

**In the Matter of Black & Decker Co.; Complaint**

*Nature of Proceedings*

1. This is an administrative proceeding pursuant to Section 15 of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2064, for public notification and remedial action to protect the public from substantial risks of injury presented by a toaster. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 C.F.R. part 1025.

*Jurisdiction*

2. This proceeding is instituted pursuant to the authority contained in sections 15 (c), (d), and (f) of the CPSA, 15 U.S.C. §§ 2064 (c), (d), and (f).

*Parties*

3. Complaint Counsel is the staff of the Division of Administrative Litigation of the Office of Compliance of the U.S. Consumer Product Safety Commission, an independent regulatory commission established by Section 4 of the CPSA. 15 U.S.C. § 2053.

4. Respondent Black & Decker Corporation is a Maryland corporation with its principal place of business located at 701 E. Joppa Road, Baltimore, Maryland 21286–5559.

5. Black & Decker is a ''manufacturer'' of consumer products as that term is defined in the CPSA, 15 U.S.C. § 2052(a)(4).

*The Consumer Product*

6. The Black & Decker Spacemaker Optima Toaster, Model T1000, Type 1 (''Spacemaker Toaster'') is a toaster designed, produced and distributed specifically to be installed directly under kitchen cabinets and is a consumer product. 15 U.S.C. § 2052.

*Substantial Risks of Injury*

7. Paragraphs 1 through 6 are hereby realleged.

8. The Spacemaker Toaster is designed to be mounted underneath kitchen cabinets. There is a glass door on the front of the toaster. The consumer inserts the food item in the front of the toaster, horizontally, onto a rack.

9. An electronic timer in the Spacemaker Toaster with thermal compensation controls the temperature.

10. When a toasting cycle is complete, a glass door on the front of the Spacemaker Toaster automatically opens and the rack containing the food item extends out—also automatically—approximately 1½ inches.

11. The Spacemaker Toaster sets food items on fire because the electronic timer does not adequately control temperature within the product.

12. If food items ignite, the Spacemaker Toaster releases the flames at the end of the toasting cycle when the glass door automatically opens and the rack containing the burning food automatically extends.

13. The features of the Spacemaker Toaster set forth in paragraphs 9 through 11 above constitute design defects under 15 U.S.C. § 2064.

14. When the Spacemaker Toaster releases flames, the flames may impinge directly on the kitchen cabinets and combustibles in the cabinet, igniting the cabinet and/or its contents. The fires may spread, exposing consumers to the risk of bodily injury or death by burning or smoke inhalation.

15. All of the approximately 224,000 Spacemaker Toasters purchased by the public carry the risk of severe injury or death because all units are of the same design.

16. The defects in the Spacemaker Toasters create a substantial risk of injury to consumers within the meaning of Section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

17. The Spacemaker Toaster presents a substantial product hazard as described in sections 15(a)(2), (c) and (d) of the CPSA, 15 U.S.C. §§ 2064 (a)(2), (c) and (d).

**Relief Sought**

Wherefore, in the public interest, Complaint Counsel requests that the Commission:

A. Determine that Respondent's Spacemaker Toasters present a ''substantial product hazard'' within the meaning of section 15 (a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2).

B. Determine that public notification under section 15(c) of the CPSA, 15 U.S.C. § 2064(c) is required to protect the public adequately from the substantial product hazard presented by the T1000 Toasters which have been distributed and order that the Respondent:

(1) Give prompt public notice that the Spacemaker Toaster presents a fire hazard to consumers and of the remedies available to remove the risk of injury;

(2) Mail notice to each person who is or has been a distributor or retailer of the Spacemaker Toaster;

(3) Mail notice to every person to whom Respondent knows the Spacemaker Toaster was delivered or sold; and

(4) Include in the notice required by (1), (2) and (3) above a complete description of the hazard presented, a warning to stop using the Spacemaker Toaster immediately; and clear instructions for returning the Spacemaker Toasters to Respondent. The form and content of the notice will be specified by the Commission.

C. Determine that action under section 15(d) of the CPSA, 15 U.S.C. § 2064(d), is in the public interest and order Respondent:

(1) To cease manufacturing for sale, offering for sale, and distributing in commerce Spacemaker Toasters;

(2) To elect to repair all Spacemaker Toasters so they will not create a fire hazard; to replace all Spacemaker Toasters with a like or equivalent product which will not create a fire hazard; or to refund to consumers the purchase price of the Spacemaker Toasters;

(3) To make no charge to consumers and to reimburse them for any foreseeable expenses incurred in availing themselves of any remedy provided under any order issued in this matter;

(4) To reimburse distributors and dealers for expenses in connection with carrying our any Commission Order issued in this matter;

(5) To submit a plan satisfactory to the Commission, within ten (10) days of service of the final Order, directing that actions specified in paragraphs C(1) through C(4) above be taken in a timely manner;

(6) To keep records of its actions taken to comply with paragraphs C(1) through C(5) above; and to supply these records to the Commission for a period of three (3) years after entry of a Final Order issued by the Commission requiring notice and remedial action, for the purpose of monitoring compliance with the Final Order;

(7) To notify the Commission at least 60 days prior to any change in their business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of successor ownership, the creation or dissolution of subsidiaries, going out of business, or any other change that might affect;

(8) To take such other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA.

Issued by Order of the Commission.

Dated: October 29, 1997.

**Alan H. Schoem,**

*Assistant Executive Director, Office of Compliance.*

**Eric Stone,**

*Director, Division of Administrative Litigation, Office of Compliance.*

**William J. Moore, Jr.,**

*Complaint Counsel, Division of Administrative Litigation, Office of Compliance.*

**Deborah J. Lewis,**

*Complaint Counsel, Division of Administrative Litigation, Office of Compliance.*

### List and Summary of Documentary Evidence Supporting the Complaint

Pursuant to 16 CFR 1025.11(b)(3) of the Commission's Rules of Practice for Adjudicative Proceedings, the following is a list and summary of documentary evidence supporting the Complaint in this matter. Complaint Counsel reserves the right to offer additional evidence during the course of the proceedings.

1. A photograph of a Spacemaker Optima Horizontal Toaster, Model T1000, Type 1.

2. A Consumer Product Safety Commission (CPSC) report dated September 21, 1995, by Terry Van Houten, Division of Human Factors. This report analyzes how consumers may engage in normal use of the Spacemaker Toaster in a manner that increases the risk of fire.

3. CPSC memorandum dated January 23, 1997 from Julie Ayers, Electrical Engineer, Office of Hazard Identification and Reduction to Renae Rauchschwalbe, Office of Corrective Actions. This memorandum explains the fire hazard posed by the Spacemaker Toaster.

4. Photographs and videotape of testing conducted by CPSC Office of Hazard Identification and Reduction on April 9, 1997. These tests show that the spread of a fire originating from food in a Spacemaker Toaster mounted underneath an open kitchen cabinet can result in a catastrophic household fire.

5. Photographs of testing conducted by CPSC Office of Hazard Identification and Reduction on June 18, 1997. These tests show that the spread of a fire originating from food in a Spacemaker Toaster mounted underneath a closed kitchen cabinet can result in a catastrophic household fire.

[FR Doc. 97–29156 Filed 11–3–97; 8:45 am]

BILLING CODE 6355–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Associated Form, and OMB Number:* Request for Family Member Educational Information; AF Form 1466A; OMB Number 0701–0122.

*Type of Request:* Reinstatement.

*Number of Respondents:* 31,656.

*Responses Per Respondent:* 1.

*Annual Responses:* 31,656.

*average Burden Per Response:* 15 minutes.

*Annual Burden Hours:* 7,914.

*Needs and Uses:* The information collection requirement is necessary to evaluate family members' needs for any special medical or educational services; to assist in making CONUS/OCONUS assignment recommendations; and to code and re-enroll eligible family members into the Exceptional Family Member Program. Respondents are dependents and students who may require medical or education services. Information is collected prior to new assignments. Data is needed to ensure proper medical and educational needs are available at new assignments.

*Affected Public:* Individuals or Households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 29, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–29068 Filed 11–3–97; 8:45 am]

BILLING CODE 5000–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission of OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Associated Form, and OMB Number:* Commercial Airlift Review; AMC Form 207; OMB Number 0701–0137.

*Type of Request:* Revision.

*Number of Respondents:* 30.

*Responses Per Respondent:* 1.

*Annual Responses:* 30.

*Average Burden Per Response:* 20 hours.

*Annual Burden Hours:* 600.

*Needs and Uses:* The information collection requirement is necessary to assist the overall evaluation of commercial aircraft to provide quality, safe, and reliable aircraft service when procured by the Department of Defense. Respondents are commercial air carriers desiring to supply airlift services to the Department of Defense. AMC Form 207 provides vital information from the carriers needed to determine their eligibility to participate in the DoD Air Transportation Program.

*Affected Public:* Business or Other For-Profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 29, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–29069 Filed 11–3–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 98–02]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Assistance Agency, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–02, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: October 29, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

20 OCT 1997

In reply refer to:
I-54057/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-02, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Korea for defense articles and services estimated to cost $90 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Korea

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 35 million |
| Other | $ 55 million |
| TOTAL | $ 90 million |

(iii) Description of Articles or Services Offered:
One MK 41 Vertical Launch System, MK 41 Weapon Direction System, OT-134 transmitter, MK 13 MOD 0 canisters, shipboard checkout and operation of launch system hardware, U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support.

(iv) Military Department: Navy (LOP)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 20 OCT 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea - MK 41 Vertical Launch System

The Government of Korea has requested the possible sale of one MK 41 Vertical Launch System, MK 41 Weapon Direction System, OT-134 transmitter, MK 13 MOD 0 canisters, shipboard checkout and operation of launch system hardware, U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support. The estimated cost is $90 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

The missile launcher system will be installed on a new construction frigate and is intended for use with STANDARD missiles as the principal air defense armament of these new vessels. Korea will have no difficulty absorbing this missile launch system into its armed forces. It is anticipated that Korea will purchase several additional launch systems.

The proposed sale of this shipboard missile launch system and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Aero and Naval Systems, Baltimore, Maryland. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will not require the assignment of any contractor representatives in Korea; however, there will be three U.S. Government personnel for approximately 13 months during the preparation, equipment installations, and equipment test and checkout of the MK 41 Vertical Launch System on the ship.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-02

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The MK-41 Vertical Launch System (VLS) contains sensitive technology and is Unclassified. The launch control computer program, which also contains missile launch rates, is classified Confidential. Sections of the MK-41 technical documentation, which disclose launcher vulnerabilities, are classified Confidential.

2. If a technologically advanced adversary were to obtain knowledge of this system, it is possible that countermeasures could be developed to reduce its effectiveness.

3. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97–29064 Filed 11–3–97; 8:45 am]
BILLING CODE 5000–04–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 98–03]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Assistance Agency, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated, July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–03, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: October 29, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5000–04–M**

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

20 OCT 1997

In reply refer to:
I-54059/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-03, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $30 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Transmittal No. 98-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 27 million |
| Other | $ 3 million |
| TOTAL | $ 30 million |

(iii) Description of Articles or Services Offered:
Three hundred one Multiple Launch Rocket System (MLRS) tactical rocket pods and other related elements of program support.

(iv) Military Department: Army (YPU)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 20 OCT 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - Multiple Launch Rocket System Tactical Rocket Pods

The Government of Israel has requested the possible sale of 301 Multiple Launch Rocket System (MLRS) tactical rocket pods and other related elements of program support. The estimated cost is $30 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel will use the MLRS tactical rocket pods to enhance its current area fire system for use against hostile artillery, air defense and maneuver elements. Israel, which already operates the MLRS system, will have no difficulty absorbing these additional rocket pods.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin Vought Systems, Dallas, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-03

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The highest level of classified information required to be released for training, operation and maintenance of the MLRS is Confidential. The highest level which could be revealed through reverse engineering or testing of the end item is Confidential. This information includes Confidential reports and test data, as well as performance and capability data, classified Confidential/Secret.

2. If a technologically advanced potential adversary gained access to this information, countermeasures could be developed which would reduce the effectiveness of the missile system.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97–29065 Filed 11–3–97; 8:45 am]
BILLING CODE 5000–04–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 97–27]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Defense Security Assistance Agency, DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–27, with attached transmittal and policy justification.

Dated: October 29, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5000–04–M**

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

21 JUL 1997

In reply refer to:
I-50566/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 97-27, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Saudi Arabia for defense articles and services estimated to cost $53 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Transmittal No. 97-27

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Saudi Arabia

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $30 million |
| Other | $23 million |
| TOTAL | $53 million |

(iii) Description of Articles or Services Offered: Communications equipment including 465 AN/VRC-90, 355 AN/VRC-92 and 404 AN/VRC-119 radios, 42 RT-1702C receiver transmitter, high frequency radios, installation kits, spare and repair parts, support equipment, publications and technical documentation, contractor engineering and technical assistance, personnel training and other related elements of logistics support for the Saudi Arabian National Guard (SANG).

(iv) Military Department: Army (WFW, Amendment 2)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(vii) Date Report Delivered to Congress: 21 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - Communications Equipment

The Saudi Arabian Government requested the purchase of communications equipment including 465 AN/VRC-90, 355 AN/VRC-92 and 404 AN/VRC-119 radios, 42 RT-1702C receiver transmitter, high frequency radios, installation kits, spare and repair parts, support equipment, publications and technical documentation, contractor engineering and technical assistance, personnel training and other related elements of logistics support for the Saudi Arabian National Guard (SANG). The estimated cost is $53 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

This equipment will provide common hardware down to the platoon level within the SANG light brigades. It will augment SANG strategic communications between the light armored brigades, light brigades and headquarters components. Saudi Arabia will have no difficulty absorbing this communications equipment.

The sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be ITT, Fort Wayne, Indiana and Harris Corporation, Rochester, New York. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel; however, there will be four field service representatives for two years in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

[FR Doc. 97–29067 Filed 11–3–97; 8:45 am]

BILLING CODE 5000–04–C

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP–97–355–003]**

### CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 29, 1997.

Take notice that on October 24, 1997, CNG Transmission Corporation (CNG), tendered for filing as part for its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Third Sub. Original Sheet No. 209
Second Sub. Original Sheet No. 211

CNG requests an effective date of June 1, 1997, for its proposed tariff sheets.

CNG states that the purposes of this filing is to correct the inadvertent reference to Sheet No. 38 in Section 4.1.A of Rate Schedule MPS, on Sheets No. 209. CNG has also corrected the effective date and docket number reference in the footer of that sheet, and has corrected identical errors that were also found in the footer of Sheet No. 211.

CNG states that copies of this letter of transmittal and enclosures are being mailed to parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–29092 Filed 11–3–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–105–006]**

### Nora Transmission Company; Notice of Proposed Changes In FERC Gas Tariff

October 29, 1997.

Take notice that on October 24, 1997, Nora Transmission Company (Nora) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective November 1, 1997:

Substitute Second Revised Sheet No. 135

Nora states that the proposed tariff sheet is submitted in compliance with the Letter Order issued by the Commission on October 17, 1997 in Docket No. RP97–105–005. In the Order, the Commission accepted the tariff sheet effective November 1, 1997, subject to conditions.

Nora states that Tariff Sheet No. 135 has been corrected to properly state reference cites for Section 16.3 of Nora's General Terms and Conditions as required by the Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should 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.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 97–29091 Filed 11–3–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–48–000]**

### Northern Natural Gas Company; Notice of Request Under Blanket Authorization

October 29, 1997.

Take notice that on October 24, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No CP98–48–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to upgrade two existing delivery points located in LaCrosse and Monroe Counties, Wisconsin, to accommodate natural gas deliveries to Northern States Power Company—Wisconsin (NSP), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to upgrade these delivery points to accommodate natural gas deliveries to NSP under currently effective throughput service agreements.

Northern asserts that NSP has requested the upgrade of the existing delivery points to provide increased natural gas service to the Fort McCoy #1 and LaCrosse #2 town border stations. The estimated incremental volumes proposed to be delivered to NSP at these delivery points are 3,663 MMBtu on a peak day and 330,284 MMBtu on an annual basis. Northern states that the estimated cost to install the delivery points is $210,000.

In addition to the authorization requested herein, Northern states that it will construct certain branchline compression on its LaCrosse branchline pursuant to the automatic authorization of the blanket certificate and Section 157.208(a) of the Commission's Regulations.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 97–29090 Filed 11–3–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–519–001]**

### Tennessee Gas Pipeline Company; Notice of Compliance Filing

October 29, 1997.

Take notice that on October 24, 1997, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of October 9, 1997:

Sub Second Revised Sheet No. 351A
Sub Second Revised Sheet No. 352
Sub Second Revised Sheet No. 524
Sub Original Sheet No. 676

Tennessee states that these sheets are filed in compliance with the Commission's October 9, 1997 Letter Order in the above-referenced docket (October 9 Order). Tennessee Gas Pipeline Company, 81 FERC ¶61,008 (1997). Tennessee further states that the revised tariff sheets effect certain clarifications to its Agency Arrangement tariff provision and its pro forma Agency Authorization Agreement and Agency Authorization Agreement for Electronic Data Interchange as directed by the October 9 Order.

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 18 CFR 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 this proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 97–29093 Filed 11–3–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–12–001]**

### Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 29, 1997.

Take notice that on October 24, 1997, Williams Natural Gas Company (WNG), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with the proposed effective date of November 1, 1997.

Substitute Second Revised Sheet Nos. 8E and 8F

WNG states that it made a filing in Docket Nos. RP98–12, *et al.*, on October 1, 1997 to submit its fourth quarter 1997 report of take-or-pay buyout, buydown and contract reformation costs and gas supply related transition costs, and the application or distribution of those costs and refunds. The instant filing is being made to revise Schedule 4 of the original filing to reflect revision of certain customers' October MDTQ's which were not finalized until after October 1, 1997. All other aspects of WNG's October 1 filing are unchanged.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of WNG's jurisdictional customers and interested state 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–29094 Filed 11–3–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–45–000]**

### Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

October 29, 1997.

Take notice that on October 22, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP98–45–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. (Montana-Dakota) for ultimate use by additional residential customers in South Dakota, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin states that it recently received a request from Montana-Dakota for authorization to add additional residential customers to an existing transmission line tap at Station 9059+59 on Williston Basin's Belle Fourche to Rapid City line, located in Section 36, T5N, R5E, Meade County, South Dakota. The estimated additional volume to be delivered is 2,500 Dkt per year.

Williston Basin states that this proposal will have no significant effect on its peak day or annual requirements, that the total volumes delivered will not exceed total volumes authorized prior to this request, that its existing tariff does not prohibit the addition of new delivery points and that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 97–29089 Filed 11–3–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–19–000]**

## Williston Basin Interstate Pipeline Company; Notice of Section 4 Filing

October 29, 1997.

Take notice that on October 22, 1997, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services which are currently being provided through facilities authorized to be abandoned by sale to Constitution Gas Transport Company, Inc.[1] Williston Basin requests that the proposed termination of service be effective December 1, 1997. Williston Basin maintains that the proposed termination of service will not adversely affect its ability to render certificated transportation service to its customers or its ability to meet fully its currently contractual obligations.

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. Under section 154.210 of the Commission's Regulation, all such motions or protests should be filed on or before November 3, 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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–29095 Filed 11–3–97; 8:45 am]

BILLING CODE 6717–01–M

[1] *See* Williston Basin Interstate Pipeline Co., 81 FERC ¶62,006 (1997).

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER96–2709–000, et al.]**

## Entergy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 29, 1997.

Take notice that the following filings have been made with the Commission:

### 1. Entergy Services, Inc.

[Docket No. ER96–2709–000]

Take notice that on October 22, 1997, Entergy Services, Inc., as agent for Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Utilities Company (Entergy Gulf States), Entergy Louisiana, Inc. (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), and Entergy New Orleans, Inc. (Entergy New Orleans) (collectively, the Entergy Operating Companies) filed additional information in the above referenced docket.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 2. NESI Power Marketing, Inc.

[Docket No. ER97–841–003]

Take notice that on October 24, 1997, NESI Power Marketing, Inc., tendered for filing their Transaction Reports for short-term transactions for the second quarter of 1997, pursuant to the Commission's order in *Northern Indiana Public Service Company and NIPSCO Energy Services, Inc.*, 75 FERC ¶ 61,213 (1996) and the Commission's March 13, 1997, letter order in *NESI Power Marketing, Inc.*, Docket No. ER97–841–000.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 3. American Electric Power Corporation

[Docket No. ER97–2769–000]

Take notice that on October 24, 1997, the American Power Service Corporation (AEPSC), on behalf of Indiana Michigan Company, amended its filing in the referenced docket, providing new exhibits showing the extent of rate reductions proposed under two agreements and revising an exhibit filed previously regarding unbundled cost components requested by the Commission's Staff. AEPSC renewed its requests for waiver of notice regarding effective dates.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commission of Indiana and Michigan.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 4. Minnesota Power & Light Company

[Docket No. ER98–131–000]

Take notice that on October 10, 1997, Minnesota Power & Light Company (MP), tendered for filing signed Service Agreements with Central Minnesota Municipal Power Agency and Union Electric Company under MP's cost-based Wholesale Coordination Sales Tariff WCS–1 to satisfy its filing requirements under this tariff.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 5. South Carolina Electric & Gas Company

[Docket No. ER98–132–000]

Take notice that on October 10, 1997, South Carolina Electric & Gas Company, tendered for filing proposed cancellation of Rate Schedule T1.S8(FPC), between South Carolina Electric & Gas Company and South Carolina Public Service Authority.

Under the proposed cancellation the contract which expired effective December 31, 1995, will be canceled.

Copies of this filing were served upon South Carolina Public Service Authority.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

### 6. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation

[Docket No. ER98–133–000]

Take notice that on October 10, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated September 30, 1997, (the Service Agreement) between Pennsylvania Power & Light Company (PP&L) and OVEC. OVEC proposes an effective date of September 30, 1997, and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to PP&L.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

Copies of this filing were served upon Pennsylvania Public Utility Commission and PP&L.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. Montaup Electric Company**

[Docket No. ER98–134–000]

Take notice that on October 10, 1997, Montaup Electric Company (Montaup) filed a Consent and Agreement by Montaup in favor of Toronto Dominion (Texas), Inc., under which Montaup consents to the assignment by Dighton Power Associates Limited Partnership (Dighton) of certain of Dighton's rights under the Interconnection Agreement between Montaup and Dighton dated as of April 10, 1997, and accepted for filing by letter order of August 4, 1997 in Docket No. ER97–2703–000.

Montaup requests that the Commission issue its order by the expiration of the 60-day notice period on December 10, 1997.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**8. Commonwealth Electric Company, Cambridge Electric Light Company**

[Docket No. ER98–135–000]

Take notice that on October 10, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission their quarterly reports under Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9) for the period of July 1, 1997 to September 30, 1997.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. New England Power Company**

[Docket No. ER98–136–000]

Take notice that on October 14, 1997, New England Power Company (NEP) filed a Service Agreement with New York State Electric & Gas Corporation for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. PP&L, Inc.**

[Docket No. ER98–137–000]

Take notice that on October 14, 1997, PP&L, Inc., formerly known as Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission one Borderline Service Agreement (Agreement) between PP&L and Pennsylvania Electric Company, d/b/a GPU Energy, dated September 11, 1997. The Agreement supplements a borderline service umbrella tariff approved by the Commission in Docket No. ER93–847–000 by establishing the precise point of delivery, metering arrangements, and transmission losses associated with a new point of delivery under the umbrella tariff.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act,* 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part,* 65 FERC ¶ 61,081 (1993), PP&L requests the Commission to make the Agreement effective as of September 11, 1997 because service will be provided under an umbrella tariff and the service agreement is filed within 30 days after the commencement of service. In accordance with 18 CFR 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER93–847–008.

PP&L states that a copy of its filing was provided to Pennsylvania Electric Company, d/b/a GPU Energy, and to Pennsylvania Public Utility Commission.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**11. Wisconsin Electric Power Company**

[Docket No. ER98–138–000]

Take notice that on October 14, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Short Term Firm Transmission Service Agreement between itself and NIPSCO Energy Services, Inc. (NESI). The Transmission Service Agreement allows NESI to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. Copies of the filing have been served on NESI, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**12. Western Resources, Inc.**

[Docket No. ER98–139–000]

Take notice that on October 14, 1997, Western Resources, Inc., tendered for filing a firm transmission agreement between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective October 9, 1997.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**13. Northern States Power Company (Minnesota Company)**

[Docket No. ER98–140–000]

Take notice that on October 14, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing the Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Madison Gas & Electric Company.

NSP requests that the Commission accept the agreement effective September 18, 1997, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**14. Washington Water Power**

[Docket No. ER98–141–000]

Take notice that on October 14, 1997, Washington Water Power tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations a Notice of Termination of the Restated Agreement For The Sale Of Firm Capacity And Firm Energy between The Washington Water Power Company (WWP) And Public Utility District No. 1 of Clark County Washington, previously filed with the Commission under Docket No. ER96–2607–000 (which has not yet been accepted for filing), has been terminated by mutual agreement, effective September 30, 1997. This termination is contingent upon effectiveness of a new long-term agreement under WWP's FERC Electric Tariff Volume No. 9.

Notice of the proposed cancellation has been served upon the following: Mr. Wayne Nelson, General Manager, Public Utility District No. 1 of Clark County, Washington, PO Box 8900, Vancouver, Washington 98668.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**15. Washington Water Power**

[Docket No. ER98–142–000]

Take notice that on October 14, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 of the Commission Rules and Regulations, an executed Long Term Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9 with Public Utility District No. 1 of Clark County, Washington. WWP requests waiver of the prior notice requirement and requests an effective date of October 1, 1997.

Notice of the filing has been served upon the following: Mr. Wayne Nelson, General Manager, Public Utility District No. 1 of Clark County, Washington, PO Box 8900, Vancouver, Washington 98668.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**16. Kansas City Power & Light Company**

[Docket No. ER98–143–000]

Take notice that on October 14, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated September 29, 1997, between KCPL and Avista Energy, Inc., KCPL proposes an effective date of October 6, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**17. Duke Energy Corporation**

[Docket No. ER98–144–000]

Take notice that on October 14, 1997, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing Transmission Service Agreements between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and the following customers:

| Customer | Type of serv. agreement | Date of serv. agreement | Requested effective date |
|---|---|---|---|
| Dayton Power & Light Company | Non-Firm | September 23, 1997 | September 23, 1997. |
| The Energy Authority, Inc | Non-Firm | September 18, 1997 | September 18, 1997. |
| Progress Power Marketing, Inc | Non-Firm | October 2, 1997 | October 2, 1997. |

Duke requests that the TSAs be made effective as rate schedules as of the dates set forth above.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**18. Wisconsin Electric Power Company**

[Docket No. ER98–145–000]

Take notice that on October 14, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Wisconsin Electric respectfully requests an effective date November 1, 1997. Wisconsin Electric is authorized to state that Williams Energy Services Company joins in the requested effective date.

Copies of the filing have been served on Williams Energy Services Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**19. Central Louisiana Electric Company, Inc.**

[Docket No. ER98–146–000]

Take notice that on October 14, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing a service agreement under which CLECO, Transmission Services (CLECO–TS) will provide Umbrella Short Term Firm point-to-point transmission service to CLECO, Wholesale Merchant Operations (CLECO-WMO) under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on CLECO–WMO.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**20. Central Louisiana Electric Company, Inc.**

[Docket No. ER98–147–000]

Take notice that on October 14, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing two service agreements under which CLECO will provide non-firm and short term firm point-to-point transmission services to Tenaska Power Services Company under its point-to-point transmission tariff.

CLECO states that a copy of the filing has been served on Tenaska Power Services Co.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**21. Central Louisiana Electric Company, Inc.**

[Docket No. ER98–148–000]

Take notice that on October 14, 1997, Central Louisiana Electric Company, Inc., (CLECO), tendered for filing an umbrella service agreement under which CLECO will make market based power sales under its MR–1 tariff with Minnesota Power and Light Company.

CLECO states that a copy of the filing has been served on Minnesota Power & Light Company.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**22. Tapoco, Inc.**

[Docket No. ER98–149–000]

Take notice that on October 14, 1997, Tapoco, Inc. (Tapoco), filed with the Commission the Amendatory Agreement Between Tennessee Valley Authority and Tapoco, Inc., dated March 1, 1997, (Agreement). The Agreement is submitted as a supplement to Tapoco Rate Schedule No. 6 and supplements to Rate Schedule No. 6. Tapoco states that the effect of the Agreement is to extend the term of an earlier Amendatory Agreement, dated October 24, 1994, and to provide the Tennessee Valley Authority (TVA) with a right of first refusal to purchase Tapoco's transmission facilities should Tapoco decide to sell. Tapoco requests that the Agreement be made effective as of March 1, 1997.

Copies of this filing were served on TVA, the Tennessee Public Service Commission, and the North Carolina

Utilities Commission. A courtesy copy of the filing was also served on Nantahala Power & Light Company, an adjoining, interconnected public utility that is a wholly-owned subsidiary of Duke Power Company.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**23. Rochester Gas and Electric Corporation**

[Docket No. ER98–150–000]

Take notice that on October 14, 1997, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and the Entergy Power Marketing Corp., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filing on July 9, 1996, in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of September 29, 1997, for the Entergy Power Marketing Corp., Service Agreement. RG&E has served copies of the filing on the New York State Public Service commission and on the Customer.

*Comment date:* November 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. 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 the comment date. 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. 97–29128 Filed 11–3–97; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–117–000, et al.]**

## Kansas City Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

October 28, 1997.

Take notice that the following filings have been made with the Commission:

**1. Kansas City Power & Light Company**

[Docket No. ER98–117–000]

Take notice that on October 10, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 6, 1997, between KCPL and Federal Energy Sales Inc. KCPL proposes an effective date of October 6, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**2. Louisville Gas and Electric Company, Kentucky Utilities Company**

[Docket No. ER98–114–000]

Take notice that on October 9, 1997, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU), tendered for filing, pursuant to 18 CFR 35.13, a proposed change to a rate schedule titled Open Access Transmission Tariff of Louisville Gas and Electric Company/Kentucky Utilities Co. (OATT) and a Joint Code of Conduct. The OATT will govern the provision of transmission service on the combined transmission systems of LG&E and KU as a single control area. The Joint Code of Conduct provides for the separation of transmission functions from wholesale energy merchant functions.

Copies of the filing were served upon LG&E's and KU's jurisdictional customers, the Kentucky Public Service Commission, the Virginia State Corporation Commission, and the Tennessee Regulatory Authority.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**3. Northern States Power Company (Minnesota Company)**

[Docket No. ER98–115–000]

Take notice that on October 10, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and MidAmerican Energy Company.

NSP requests that the Commission accept both the agreements effective September 10, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**4. Northern States Power Company (Minnesota Company)**

[Docket No. ER98–116–000]

Take notice that on October 10, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Reserved Transmission Service Agreement between NSP and Wisconsin Power and Light.

NSP requests that the Commission accept the agreement effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**5. Cinergy Services, Inc.**

[Docket No. ER98–118–000]

Take notice that on October 10, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and QST Energy Trading (QST).

Cinergy and QST are requesting an effective date of October 1, 1997.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**6. Arizona Public Service Company**

[Docket No. ER98–119–000]

Take notice that on October 10, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3 with Williams Energy Services Company and PG&E Energy Services.

A copy of this filing has been served on the Arizona Corporation

Commission, Williams Energy Services Company and PG&E Energy Services.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**7. Ohio Edison Company and Pennsylvania Power Company**

[Docket No. ER98–120–000]

Take notice that on October 10, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with PP&L, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to § 205 of the Federal Power Act.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**8. Kansas City Power & Light Co.**

[Docket No. ER98–121–000]

Take notice that on October 10, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 6, 1997, between KCPL and Union Electric Company. KCPL proposes an effective date of October 6, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**9. Maine Electric Power Company**

[Docket No. ER98–122–000]

Take notice that on October 10, 1997, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission service entered into with New York State Electric & Gas Corporation. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**10. The Montana Power Company**

[Docket No. ER98–123–000]

Take notice that on October 10, 1997, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a Non-Firm Point-To-Point Transmission Service Agreements with Aquila Power Corporation (Aquila) under Montana's FERC Electric Tariff, Second Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Aquila.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**11. Philadelphia Gas Works**

[Docket No. ER98–124–000]

Take notice that on October 10, 1997, Philadelphia Gas Works tendered for filing, pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, an application requesting acceptance of its proposed FERC Electric Rate Schedule No.1, authorizing market-based rates, granting certain blanket approvals and waivers of certain Commission regulations.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**12. Idaho Power Company**

[Docket No. ER98–125–000]

Take notice that on October 10, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff, between Idaho Power Company and Cook Inlet Energy Supply.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**13. Northern Indiana Public Service Company**

[Docket No. ER98–126–000]

Take notice that on October 10, 1997, Northern Indiana Public Service Company, tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and E Prime, Inc.

Under the Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to E Prime, Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to E Prime, pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No.ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of October 15, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**14. The Dayton Power and Light Company**

[Docket No. ER98–127–000]

Take notice that on October 10, 1997, The Dayton Power and Light Company (Dayton) submitted service agreements establishing LG&E Energy marketing Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon LG&E Energy Marketing Inc., and the Public Utilities Commission of Ohio.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**15. Washington Water Power**

[Docket No. ER98–128–000]

Take notice that on October 10, 1997, the Washington Water Power Company (WWP), tendered for filing a Termination of Agreement For Purchase and Sale of Firm Capacity and Energy with PacifiCorp under FERC Rate Schedule 160.

WWP requests that this termination become effective December 31, 1997.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**16. Cinergy Services, Inc.**

[Docket No. ER98–129–000]

Take notice that on October 10, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and QST Energy Trading (QST).

Cinergy and QST are requesting an effective date of October 1, 1997.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**17. Minnesota Power & Light Company**

[Docket No. ER98–130–000]

Take notice that on October 10, 1997, Minnesota Power & Light Company, tendered for filing a signed Service Agreement with Central Minnesota Municipal Power Agency and Union Electric Company, under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

*Comment date:* November 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

**18. UtiliCorp United Inc.**

[Docket No. ES98–3–000]

Take notice that on October 24, 1997, UtiliCorp United Inc. (UtiliCorp), filed an application seeking authorization to enter into five-year corporate guaranties in support of borrowings to be made by a UtiliCorp subsidiary or subsidiaries in connection with the acquisition of interests in an Australian electric distribution company. The sum of the amount guaranteed pursuant to the request in this docket plus previous guaranties shall not exceed $270 million, at any one time.

*Comment date:* November 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. 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 the comment date. 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. 97–29127 Filed 11–3–97; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5916–8]**

## Agency Information Collection Activities Under OMB Review; NSPS for Petroleum Refinery Wastewater Systems

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Petroleum Refinery Wastewater Systems,OMB Control Number 2060–0172, expiration date 12/31/97. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before December 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** For information or a copy of the ICR, call Sandy Farmer at EPA, (202) 260–2740, or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1136.05

**SUPPLEMENTARY INFORMATION:**

*Title:* NSPS Petroleum Refinery Wastewater Systems (OMB Number 2060–0172; EPA ICR Number 1136.05,expiring 12/31/97). This is a request for extension of a currently approved collection.

*Abstract:* The promulgated standards require record keeping to document information relating to equipment specifications, work practices, and design criteria. Information must be recorded in sufficient detail to enable owners or operators to demonstrate compliance with the standards. Owners or operators are required to keep records of design and operating specifications of all equipment installed to comply with the promulgated standards, such as traps, covers, roof seals, control devices, and other equipment. This information is used to ensure that equipment design and operating specifications are attained. Generally, this information will be readily available because it is needed for construction purposes. As a result, there should be no specific burden from this requirement.

The standards also require the owner or operator to design and operate the closed vent and control device systems in a manner which will ensure at least an overall 95 percent control efficiency. Owners or operators will ensure compliance by monitoring operational or process parameters associated with the control devices. A semiannual report must be submitted to document compliance with the standards. This requirement results in a small burden to the plant, but this requirement is the minimum needed to ensure compliance with the standards. For refineries using a flare as a control device, an initial performance test is required, which includes notification of the test date and reporting of test results to EPA. Apart from flares, no performance tests are required under these standards.

The standards do not include control requirements for air flotation systems. As a result, no inspections or associated record keeping must be performed for these facilities. The standards do require semiannual visual inspections of the roofs and access doors for oil-water separators. Semiannual visual inspection of junction box covers must also be conducted. A portable hydrocarbon analyzer is required to detect VOC emission where an oil-water separator or closed drain system is vented to a control device. The standards require records of these inspections. In addition, process drains must be periodically inspected for the presence of water in p-leg traps and seal pots. The standards require monthly inspections of drains in active service, and weekly inspections of inactive drains, or alternatively, semiannual inspections of inactive drains that are tightly capped or plugged. Records of these inspections are required where a water seal is dry or otherwise breached or a problem is identified. These records are needed to ensure continuing proper use of the required equipment (Clean Air Act section 111(h)(1)).

Additional reports are required by the General Provisions of 40 CFR 60.7. These initial reports include notification of construction or modification, reconstruction, and start-up, shutdown, or malfunction.

The standards also require a semiannual certification that all of the required inspections are being carried out in accordance with the installation of the equipment required by the standards. Semiannual reports include a summary of the information required by the record keeping requirements, such as inspection dates, inspection results, and remedial action taken.

Under the rule, the data collected by the affected industry is retained at the facility for a minimum of 2 years and made available for inspection as requested by the Administrator. Owners

or operators are also required to submit semiannual certification reports to enforcement personnel indicating that all emission detection tests and visual inspections are carried out. When excess emissions are detected or a problem is identified, the appropriate corrective action taken by the plant must be documented in the report.

The information generated by the monitoring, record keeping and reporting requirements described above is used by the Agency to ensure that facilities affected by the NSPS continue to implement their work practices and procedures used to achieve compliance with the NSPS. Specifically, after start-up, a certification that the equipment necessary to comply with the standards has been installed will ensure the use of best demonstrated technology. Notification of construction and start-up will indicate to enforcement personnel when a new affected facility has been constructed and is therefore subject to the standards.

The semiannual summary of visual inspections and emission detection tests will be used as an indication that the work practices and procedures called for by these standards are being followed on a regular basis. This is especially important in the case of water seal controls where a drop in water levels can result in increased emissions unless checked regularly.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 18, 1997 (62 FR 33069).

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 47 hours per response including a performance test and 18 hours per response not including the performance test. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners/Operators of Petroleum Refinery Wastewater Systems

*Estimated Number of Respondents:* 114.

*Frequency of Response:* Semiannual.

*Estimated Total Annual Hour Burden:* 14,269 hours.

*Estimated Total Annualized Cost Burden:* $65,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1136.05 and OMB Control No. 2060–0172 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov)
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: October 29, 1997.

**Richard T. Westlund,**

*Acting Director, Regulatory Information Division.*

[FR Doc. 97–29151 Filed 11–3–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–00227; FRL–5753–9]**

## Armstrong Data Services; Access to Confidential Business Information

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor, Armstrong Data Services (ADS), of Vienna, VA to retain temporary employees, via a temporary employment agency, to perform an audit of EPA's collection of Confidential Business Information submitted to EPA under all sections of the Toxic Substances Control Act located in EPA's Confidential Business Information Center. ADS has retained Telesec Incorporated of Wheaton, MD to identify these temporary employees. All temporary employees have been TSCA CBI cleared in accordance with the provisions of EPA's ''TSCA Confidential Business Information Security Manual.''

**DATES:** Access to TSCA CBI occurred on October 23, 1997.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epa.mail.gov.

**SUPPLEMENTARY INFORMATION:** Under contract number 68–W5–0025, ADS was retained to maintain EPA's collection of Confidential Business Information (CBI) submitted to EPA under all sections of the Toxic Substances Control Act (TSCA) located in EPA's Confidential Business Information Center (60 FR 50579, September 29, 1995) (FRL–4980–4). The ''TSCA Confidential Business Information Security Manual'' (Manual) provides that the TSCA CBI collection will be audited on an annual basis. In accordance with its contract with EPA, ADS sought the approval of EPA to retain temporary employees to perform the required audit. Subsequently, ADS retained Telesec Incorporated of Wheaton, MD to identify temporary employees. These persons have been cleared for access to TSCA CBI in accordance with the provisions of the Manual. The Manual provisions require that contractor employees, including temporary employees, sign nondisclosure agreements, be subject to background checks and be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that ADS's temporary employees may have access to these CBI materials on a need-to-know basis only. All access to TSCA CBI for the performance of the audit is taking place at EPA Headquarters. It is expected that the audit will be completed no later than March of 1998.

Dated: October 29, 1997.

**Allan S. Abramson,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 97–29154 Filed 11–3–97; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00512; FRL–5753–8]**

## FIFRA Scientific Advisory Panel; Open Meeting

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

**ACTION:** Notice of open meeting.

**SUMMARY:** There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with Estimating Drinking Water Exposure as a Component of the Dietary Risk Assessment and a Review of the Spray-Drift Task Force Aerial Data Base. The session concerning estimating drinking water exposure will include presentations on SCI-GROW: groundwater screening model for predicting pesticide concentrations in water, percentage crop based dilution factors for run-off and surface water models, description of the screening model GENEEC for estimating pesticide concentrations in surface water and the run-off model PRZM, screening model for predicting pesticide concentrations in flowing surface water and drinking water reservoirs and use of water monitoring data for drinking water exposure assessments. The Spray-Drift Task Force Aerial Data Base review will include presentations on aerial field data, review of atomization and physical properties data, a model for predicting downwind deposition for agricultural spray-drift and the model validation process for agricultural spray-drift.

**DATES:** The meeting will be held on Wednesday and Thursday, December 10 and 11, 1997, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at: Crystal City Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA. The telephone number for the hotel is: (703) 920–3230.

By mail, submit written comments (one original and 20 copies) to: Larry Dorsey, Designated Federal Official for the FIFRA/Scientific Advisory Panel, (7509C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 819B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under SUPPLEMENTARY INFORMATION of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as 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 will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Larry C. Dorsey, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 819B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5369, e-mail: dorsey.larry@epamail.epa.gov.

A meeting agenda is currently available and copies of EPA primary background documents for the meeting will be available no later than November 10 and may be obtained by contacting: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, telephone: (703) 305–5805.

**SUPPLEMENTARY INFORMATION:** Any member of the public wishing to submit written comments should contact Larry C. Dorsey at the address or the telephone number given above to confirm that the meeting is still scheduled and that the agenda has not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. As oral statements only will be permitted as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 20 copies of the summary information. Please note that comments received by December 1, 1997, ensure that the Panel Members will have the time necessary to consider and review the comments.

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch, at the address or telephone number given above.

The official record for this document, as well as the public version, has been established for this document under docket control number ''OPP–00512'' (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 record is located at the Virginia 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 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–00512.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

Dated: October 29, 1997.

**Stephen L. Johnson,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 97–29155 Filed 11–3–97; 8:45 am]

**BILLING CODE 6560–50–F**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5916–6]**

## Final NPDES General Permit for Discharge From New and Existing Sources in the Offshore Subcategory of the Oil and Gas Extraction Category for the Territorial Seas of Louisiana (LAG260000)

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

**ACTION:** Final issuance of NPDES general permit.

**SUMMARY:** Region 6 of the United States Environmental Protection Agency (EPA) today issues a National Pollutant Discharge Elimination System (NPDES) General Permit for the Oil and Gas Extraction Point Source Category, in the Territorial Seas of Louisiana. The permit authorizes discharges from New Sources and Existing Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A) located in and discharging pollutants to the territorial seas of Louisiana. The discharge of produced water to the Territorial Seas of Louisiana from Offshore Subcategory facilities located in the Outer Continental Shelf (OCS) waters off Louisiana is also covered by this permit.

**DATES:** All limits and monitoring requirements except the water quality based limits and monitoring for toxicity, benzene, lead, total phenols, and thallium shall become effective December 4, 1997. The water quality based limits and monitoring shall become effective May 4, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wilma Turner, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665 7516.

**SUPPLEMENTARY INFORMATION:**

### Regulated Entities

Entities potentially regulated by this action are those which operate offshore oil and gas extraction facilities located in the territorial seas offshore of Louisiana.

| Category | Examples of regulated entities |
|---|---|
| Industry ..... | Offshore Oil and Gas Extraction Platforms. |

This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your [facility, company, business, organization, etc.] is regulated by this action, you should carefully examine the applicability criteria in Part I. Section A.1. of the general permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, EPA proposed and solicited public comment on NPDES General Permit LAG260000 at 61 FR 37746 (July 19, 1996). This permit was proposed to address national effluent limitations guidelines promulgated March 4, 1993 and to reissue the general permit covering facilities located in the territorial seas off the State of Louisiana which expired June 30, 1984. Notice of this proposed permit was also published in the New Orleans Times Picayune on July 27, 1996. The comment period closed on September 17, 1996.

Region 6 received comments from the Offshore Operators Committee, American Petroleum Institute, Louisiana Department of Environmental Quality, Willie R. Taylor—United States Department of Interior, Abraham E. Haspel—United States Department of Energy, Flores & Rucks, Inc., Exxon Company, U.S.A., and the Louisiana Mid-Continent Oil and Gas Association.

EPA Region 6 has considered all comments received. In some instances minor wording changes were made in the final permit in order to clarify some points as a result of comments or to correct typographical errors. In response to the comments received on the proposed permit, the following substantive changes were made in the final permit. Language showing that new sources are covered was added. The critical dilution tables for toxicity limitations were recalculated and expanded to account for additional discharge rates and pipe diameters. Equations were added in place of the tables for determining the limitations for benzene, lead, phenols, and thallium. A period of six months was given to come into compliance with the water quality based limits for produced water. Model input parameters for diffuser modeling were updated based on site specific data. The table specifying vertical separation between discharge ports has been updated to account for greater volume discharges. Produced water discharges are prohibited in some instances in accordance with State regulations (LAC 33:IX.708.C.2.c.iii, iv, and v.). Biochemical oxygen demand and total suspended solids limitations and monitoring were added for sanitary waste water discharges under 2,500 gallons per day, and chlorine limitations were added for sanitary waste water discharges from platforms which are manned by nine or fewer persons. 24-hour reporting requirements and unauthorized discharge requirements were changed to reflect State regulations. The permit requires operators to submit notification of intent to be covered and discharge monitoring reports to the State instead of EPA. The State's field designation is also required to be included in notifications of intent to be covered. The permit also no longer requires permittees to apply for the reissued permit six months prior to the expiration date.

A copy of the Response to Comments may be obtained from Wilma Turner at the address listed above.

### Other Legal Requirements

*Oil Spill Requirements*

CWA section 311 prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges in compliance with NPDES permit limits are excluded from this prohibition, but the final permit neither precludes enforcement action for violations of CWA section 311 nor relieves permittees from any responsibilities, liabilities, or penalties for other unauthorized discharges of oil or hazardous materials subject to CWA section 311.

*Endangered Species Act*

As explained at 61 FR 37746, EPA has found that issuance of the General Permit for the territorial seas off Louisiana will not adversely affect any listed threatened or endangered species or designated critical habitat and requested written concurrence on that determination from the Department of Interior, Fish and Wildlife Service. The Fish and Wildlife Service and National Marine Fisheries Service provided such concurrence on the proposed General Permit for Discharges from the Offshore Subcategory of the Oil and Gas Extraction Point Source Category to the Territorial Seas of Louisiana (LAG260000).

*Ocean Discharge Criteria Evaluation*

At 61 FR 37746, EPA Region 6 determined that discharges in compliance with the proposed general permit for the territorial seas of Louisiana (LAG260000) would not cause unreasonable degradation of the marine environment. No comments have been received which disagree with that determination.

*Environmental Impact Statement*

EPA determined that issuance of the NPDES General Permit for Discharges

from the Offshore subcategory of the Oil and Gas Extraction Category to the Territorial Seas of Louisiana was a major Federal action significantly affecting the quality of the human environment. Thus, pursuant to the National Environmental Policy Act of 1969 (NEPA) evaluation of the potential environmental consequences of the permit action in the form of an Environmental Impact Statement (EIS) was required.

On February 12, 1993, the U.S. Environmental Protection Agency (EPA), Region 6, published a Notice of Intent in the **Federal Register**, to prepare an Environmental Impact Statement (EIS) on its proposed New Source NPDES General Permit for the Offshore Subcategory of the Oil & Gas Extraction Category to the Territorial Seas of the Gulf of Mexico off Texas and Louisiana. The 45-day public review and comment period ended on March 16, 1994. A public hearing to receive comments on the Draft EIS and NPDES permit was held March 16, 1994.

Although the Draft EIS evaluated the NPDES general permits for oil and gas operations in the Territorial Seas of Texas and Louisiana, EPA has not proposed a permit for the Territorial Seas of Texas; therefore, the Final EIS only covers the Louisiana NPDES general permit. The Draft EIS and Final EIS have been completed. EPA considered all information gathered during the NEPA review including the impact analysis, comments received on the Draft EIS and Final EIS, input received from the scoping meeting and public hearing on the draft EIS, and other information provided by interested parties during the EIS process. Additionally, to address impacts relative to Federal and State statutes, programs, and regulations, consultation was undertaken with the Advisory Council on Historic Preservation, the U.S. Fish and Wildlife Service, and the Louisiana Department of Environmental Resources. Through this process EPA found no predicted unacceptable or potentially significant adverse impacts, individually or cumulatively, that were not subject to control through regulation or mitigation. The record of Decision for that process was prepared and is planned to be publicly noticed along with this final permit. Based on that Record of Decision, EPA is issuing the General Permit for Discharges from the Offshore Subcategory of the Oil and Gas Extraction Point Source Category to the Territorial Seas of Louisiana.

*Coastal Zone Management Act*

The Region found the proposed general permit consistent with Louisiana's approved Coastal Zone Management Plan and submitted that determination and a copy of the proposed permit to the Coastal Management Division of the Louisiana Department of Natural Resources for certification. The Department of Natural Resources provided such certification on August 22, 1996.

*Marine Protection and Sanctuaries Act*

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. No marine sanctuaries designated under the Marine Research and Sanctuaries Act exist in the area to which this permit applies.

*State Water Quality Certification*

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable State water quality standards or limitations. The proposed permit contains limitations intended to ensure compliance with State water quality standards and has been determined by EPA Region 6 to be consistent with Louisiana's water quality standards and the corresponding implementation plan. The Region solicited certification of the permit from the Louisiana Department of Environmental Quality at the time it was proposed.

On September 25, 1996 the State submitted a conditional letter certifying that discharges in accordance with the permit will not violate water quality standards. That certification was modified with a letter the State submitted on September 19, 1997. The four conditions of certification LDEQ included in those letters are:

1. The discharge of produced water onto any intermittently exposed sediment surface is prohibited (LAC 33:IX.708.C.2.c.iii).

2. Produced water shall not be discharged within the boundaries of any State or Federal wildlife management area, refuge or park or into any water body determined by the Water Pollution Control Division to be of special ecological significance (LAC 33:IX.708.C.2.c.iv).

3. Produced water shall not be discharged within 1,300 feet (via water) of an active oyster lease, live natural oyster or other molluscan reef, designated oyster seed bed, or sea grass bed. No produced water shall be discharged in a manner that, at any time, facilitates the incorporation of significant quantities of hydrocarbons or radio nuclides into sediment or biota (LAC 33:IX.708.C.2.c.v).

4. Sanitary waste discharges with an average daily flow of less than 2,500 gallons per day shall not exceed a weekly average of 45 mg/l for a five day biochemical oxygen demand and for total suspended solids (LAC 33:IX.709.B & LAC 33:IX.711.C).

Those changes have been incorporated in the final permit as required.

*Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order. Guidance on Executive Order 12866 contains the same exemptions on OMB review as existed under Executive Order 12291. In fact, however, EPA prepared a regulatory impact analysis in connection with its promulgation of the guidelines on which a number of the permit's provisions are based and submitted it to OMB for review. (See 58 FR 12494, March 4, 1993.)

*Paperwork Reduction Act*

The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Since this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000) the paperwork burdens are expected to be nearly identical. When it issued the OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to

prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for this permit will be the same.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As indicated below, the permit issued today is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that issuance of this permit will not have a significant impact on a substantial number of small entities.

*Unfunded Mandates Reform Act*

Section 201 of the Unfunded Mandates Reform Act (UMRA), P.L. 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See*, e.g., UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * *(other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added).) UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA has determined that the final permit would not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the permit would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (*See* UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The final permit also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

NPDES Permit LAG260000 is hereby issued as it appears below.

**Authorization To Discharge Under the National Pollutant Discharge Elimination System**

In compliance with the Clean Water Act, as amended (33 U.S.C. 1251 et. seq., the ''Act''), operators of New Sources and existing sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category which are located in lease blocks in the territorial seas of Louisiana are authorized to discharge to the territorial seas of Louisiana in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof. Also, operators of New Sources and existing sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category which are located in lease blocks in the Outer Continental Shelf off Louisiana are authorized to discharge produced water from those lease blocks to the territorial seas of Louisiana in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof.

Operators of lease blocks discharging within the area covered by this general permit must submit written notification to the Director that they intend to be covered (See Part I.A.2). Unless otherwise notified in writing by the Director after submission of the notification, owners or operators requesting coverage are authorized to discharge under this general permit. Operators of lease blocks discharging within the general permit area who fail to notify the Director of intent to be covered by this general permit are not authorized under this general permit to discharge pollutants from those facilities.

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historic Places are also not authorized to discharge under this permit.

This permit shall become effective at Midnight Central Daylight Savings Time December 4, 1997.

This permit and the authorization to discharge shall expire at midnight, Central Daylight Savings Time, December 4, 2002.

**William B. Hathaway,**

*Director, Water Quality Protection Division, EPA Region 6.*

**Part I. Requirements for NPDES Permits**

*Section A. Permit Applicability and Coverage Conditions*

1. Operations Covered

This permit establishes effluent limitations, prohibitions, reporting requirements, and other conditions on discharges from oil and gas facilities engaged in production, field exploration, developmental drilling, well completion, and well treatment operations.

The permit coverage area consists of New Source and existing source discharges in lease blocks located in the territorial seas of Louisiana, which discharge to the territorial seas of Louisiana. In addition, permit coverage consists of discharges of produced water from lease blocks in the Outer Continental Shelf offshore of Louisiana which are made to the territorial seas of Louisiana. This permit does not authorize discharges from facilities defined as ''coastal'', ''onshore'', or ''stripper'' (see 40 CFR part 435, subparts C, D, and E).

2. Notification Requirements

Written notification of intent to be covered including the legal name and address of the operator, the lease block number assigned by the state or the Department of Interior or, if none, the name commonly assigned to the lease area, and the number and type of facilities located within the lease block shall be submitted at least fourteen days prior to the commencement of discharge. New Source facilities shall be clearly identified as such in the notification. Operators discharging within the area of coverage of this permit prior to permit issuance shall submit notification of intent to be covered within 30 days after such issuance. If an application for an individual NPDES permit has been previously submitted for the lease, the

notification shall include the application/permit number or the permit number of any individual NPDES permit issued by EPA Region 6 for this activity.

All notifications of intent to be covered and any subsequent reports under this permit shall be sent to the following address: Louisiana Department of Environmental Quality, Office of Water Resources, Attn: Oil and Gas Permits Unit, 7290 Bluebonnet, P.O. Box 82215, Baton Rouge, Louisiana 70884–2215.

3. Termination of Operations

Lease block operators shall notify the Director within 60 days after the permanent termination of discharges from their facilities within the lease block.

4. Application for NPDES Individual Permit

a. Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Director.

b. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

*Section B. Effluent Limitations and Monitoring Requirements*

1. Drilling Fluids and Drill Cuttings

There shall be no discharge of drilling fluids or drill cuttings.

2. Deck Drainage

(a) Limitations

*Free Oil.* No free oil shall be discharged, as determined by the visual sheen method on the surface of the receiving water. Monitoring shall be performed once per day when discharging, during conditions when an observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge, and the facility is manned. The number of days a sheen is observed must be recorded.

3. Produced Water

(a) Limitations

*Oil and Grease.* Produced water discharges must meet both a daily maximum of 42 mg/l and a monthly average of 29 mg/l for oil and grease. The sample type shall be either grab, or a 24-hour composite which consists of the arithmetic average of the results of 4 grab samples taken over a 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. Samples shall be collected prior to the addition of any seawater to the produced water waste stream. The analytical method is that specified at 40 CFR part 136.

*Benzene, Lead, Thallium, and Total Phenol.* Produced water discharges must meet the limits for benzene, lead, thallium, and total phenol calculated using the following equations and the produced water critical dilution shown in Appendix A, Table 1 of this permit.

**Benzene**

Daily Max.=(220.8 µg/l / Critical Dilution) * 100
Monthly Avg.=(93 µg/l / Critical Dilution) * 100

**Total Lead**

Daily Max.=(36.7 µg/l / Critical Dilution) * 100
Monthly Avg.=(15.5 µg/l / Critical Dilution) * 100

**Total Thallium**

Daily Max.=(19.6 µg/l / Critical Dilution) * 100
Monthly Avg.=(8.3 µg/l / Critical Dilution) * 100

**Total Phenol**

Daily Max.=(478 µg/l / Critical Dilution) * 100
Monthly Avg.=(201 µg/l / Critical Dilution) * 100

These limits and the associated monitoring requirements for benzene, total lead, total thallium, and total phenol shall become effective six months after the effective date of the permit.

The flow used to determine the critical dilution from the table shall be the flow most recently reported on the discharge monitoring report for the facility. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the most recent monthly average flow. The depth used to determine the limits shall be the difference in water depth between the discharge pipe and the sea floor or between the water's surface and the seafloor if the produced water is discharged above the surface. The sample type shall be grab. The analytical method is that specified at 40 CFR part 136. When seawater is added to the produced water waste stream prior to discharge, the total produced water flow, including the added seawater, shall be used in determining the critical dilution from Appendix A, Table 1. Limitations for benzene, total lead, total phenol, and total thallium shall become effective six months after the effective date of this permit.

If any individual analytical test result is less than the minimum quantification level listed below, a value of zero (0) may be used for that individual result for the Discharge Monitoring Report (DMR) calculations and reporting requirements.

Total Phenol (4AAP Method): 5 µg/*l*
Thallium (Total): 10 µg/*l*
Lead (Total): 5 µg/*l*
Benzene: 10 µg/*l*

*Toxicity.* Produced water discharges must show no observed effect for the survival endpoint portion of the tests on a 7-day average minimum and monthly average minimum basis as measured by the 7-day chronic toxicity test. The No Observable Effect Concentration (NOEC) must be equal to or greater than the critical dilution concentration specified in Appendix A, Table 1 of this permit. Critical dilution shall be determined using Table 1 of this permit and is based on the discharge rate most recently reported on the discharge monitoring report and the water depth between the discharge pipe and the seafloor or between the surface and the seafloor if the discharge is made above the water's surface. Facilities which have not previously reported produced water flow on the discharge monitoring report shall use the most recent monthly average flow for determining the critical dilution from Table 1 of this permit. The monthly average minimum NOEC value is defined as the arithmetic average of all 7-day average NOEC values determined during the month. These limits and the associated monitoring requirements for toxicity shall become effective six months after the effective date of the permit.

*Methods to Increase Dilution for Compliance with Limits for Toxicity and Benzene, Lead, thallium, and Phenol.* Permittees wishing to increase mixing may use a horizontal diffuser, multiple port discharges, or add seawater as follows:

Permittees using a horizontal diffuser shall install the diffuser designed using CORMIX2. Both the numeric water quality-based limits and the critical dilution for chronic toxicity testing shall be based on the modeled dilution for the diffuser. The following input parameters shall be used in modeling the critical dilution:

Density Gradient=0.182 sigma-t/m
Ambient seawater density at diffuser depth = 1017 kg/$m^3$
Produced water density = 1070 kg/$m^3$
Current speed = 10 cm/sec.

When the water at the discharge site is of sufficient depth that the plume does not impinge the bottom, the Brooks equation shall be applied to the CORMIX2 results as follows:

1. Calculate the near field dilution factor (S) at the end of the impingement region, collapsed plume width (H), and downstream distance where the impingement region ends (x) using the CORMIX2 model.

2. Using the input conditions cited above and calculated factors from Step 1, above, calculate the far field dilution factor, $C_i/C$, using the Brooks equation:

$$\frac{C_i}{C} = \left( erf\left[ \left( \frac{1.5}{\left(1 + 8AH^{\frac{4}{3}} \frac{t}{H^2}\right)^3 - 1} \right)^{\frac{1}{2}} \right] \right)^{-1}$$

Where:

$C_i$ = concentration at end of impingement

C = concentration at edge of 100 m mixing zone

H = collapsed plume width, in meters

A = 4/3 power law dispersion parameter = 0.000453 $m^{2/3}/sec$

u = current speed

x = downstream distance where impingement region ends (from step 1, above)

t = travel time from end of impingement to 100 m, = $(100m - x)/u$

erf = the error function

3. The total dilution at the 100 m mixing zone is defined as the product of the near-field dilution factor, S, found in step 1 and the far-field dilution factor, $C_i/C$, calculated in Step 2.

Permittees shall state the calculated critical dilution corresponding to that diffuser on the annual Discharge Monitoring Report (DMR) with a certification that the diffuser is installed. The CORMIX2 model runs shall be retained by the permittee as part of its NPDES records.

Permittees using vertically aligned multiple discharge ports shall provide vertical separation between ports which is consistent with Table 2 of this permit. When multiple discharge ports are installed, the depth difference between the discharge port closest to the sea floor and the sea floor shall be the depth difference used to determine the critical dilution from Table 1 of this permit. The critical dilution value shall be based on the port flow rate (total flow rate divided by the number of discharge ports) and based on the diameter of the discharge port (or smallest discharge port if they are of different styles).

When seawater is added to the produced water waste stream prior to discharge, the total produced water flow, including the added seawater, shall be used in determining the critical dilution from Table 1.

(b) Prohibitions

The discharge of produced water is prohibited onto any intermittently exposed sediment surface, within the boundaries of any state or Federal wildlife management area, refuge, or park or into any water body determined to be of special ecological significance, within 1,300 feet of an active oyster lease, live natural oyster or other molluscan reef, designated oyster seed bed, or sea grass bed, or which facilitates the incorporation of significant quantities of hydrocarbons or radio nuclides into sediment or biota.

(c) Monitoring Requirements

*Flow.* Once per month, an estimate of the flow in the units of millions of gallons per day (MGD) must be recorded.

*Oil and Grease.* The required frequency of sampling shall be once per month by grab sample.

*Benzene, Lead, Phenol, and Thallium.* The required frequency of monitoring shall be determined from the limits calculated from Appendix A, Table 1 as follows:

| Parameter | Monthly avg. limit (ug/l) | Frequency |
|---|---|---|
| Thallium | >1,044 | Once/Quarter. |
| | ≤1,044 and >490 | Once/Month. |
| | ≤490 | Once/2 Weeks. |
| Benzene | >12,600 | Once/Quarter. |
| | ≤12,600 and >5,900 | Once/Month. |
| | ≤5,900 | Once/2 Weeks. |
| Total Lead | >65,000 | Once/Quarter. |
| | ≤65,000 and >30,600 | Once/Month. |
| | ≤30,600 | Once/2 Weeks. |
| Total Phenol | >26,400 | Once/Quarter. |
| | ≤26,400 and >12,400 | Once/Month. |
| | ≤12,400 | Once/2 Weeks. |

These monitoring requirements for benzene, total lead, total thallium, and total phenol shall become effective six months after the effective date of the permit.

Samples for monitoring these parameters shall be collected after addition of any substances, including seawater that is added prior to discharge.

If the permittee has been compliant with limits for benzene, lead, total phenol or thallium for one full year (twelve consecutive months), the required testing frequency shall be reduced to once per quarter for the parameter or parameters in compliance as long as the discharge remains in compliance.

For permittees required to monitor once per quarter or once per month as stated above, the monitoring frequency shall increase to once per two weeks for any of these parameters when the discharge has been found to exceed a limit for that parameter.

If the operator adds a diffuser, multiple discharge ports, or seawater to increase dilution to ensure compliance with the limits as described above, the operator may decrease the monitoring frequency to once per quarter after they have taken the action to increase dilution and have demonstrated compliance with the limits for three consecutive months.

*Toxicity.* The required frequency of toxicity testing shall be determined using the toxicity limits as follows:

| Toxicity limit (critical dilution) | Monitoring frequency |
|---|---|
| <1% | Once per year. |
| ≥1 and <2.25% | Once per quarter. |
| ≥2.25% | Once per month. |

The toxicity monitoring requirements shall become effective six months after the effective date of this permit.

Samples for monitoring produced water toxicity shall be collected after addition of any added substances, including seawater that is added prior to discharge. Samples also shall be representative of produced water discharges when scale inhibitors, corrosion inhibitors, biocides, paraffin inhibitors, well completion fluids, workover fluids, and/or well treatment fluids are used in operations.

If the permittee has been compliant with this toxicity limit for one continuous year (12 consecutive months), the required testing frequency shall be reduced to once per year.

For permittees required to monitor once per year or once per quarter as stated above, the monitoring frequency shall increase to once per month when the discharge has been found to exceed the limits for toxicity.

If the operator adds a diffuser, multiple discharge ports, or seawater to increase dilution to ensure compliance with the limits as described above, the operator may decrease the monitoring frequency to once per year after they have taken the action to increase dilution and have demonstrated compliance with the limits for three consecutive months.

*Radioactivity.* Produced water discharges shall be monitored for Radium 226 and Radium 228 (See Part I.D.4). The required frequency of monitoring shall be obtain using the critical dilution from Appendix A, Table 1 based on the water depth, discharge rate, and pipe diameter as also required for the toxicity limits. The required monitoring frequencies are as follows:

| Critical dilution | Monitoring frequency |
|---|---|
| < 1% | Once per year. |
| ≤ 1 and < 2.25% | Once per quarter. |
| ≤ 2.25% | Once per month. |

When the permittee has monitored radioactivity for one continuous year the required monitoring frequency shall be reduced to once per year.

4. Produced Sand

There shall be no discharge of produced sand.

5. Well Treatment, Completion, and Workover Fluids

(a) Limitations

*Free Oil.* No free oil shall be discharged.

*Oil and Grease.* Well treatment fluids must meet both a daily maximum of 42 mg/l and a monthly average of 29 mg/l limitation for oil and grease.

*Priority Pollutants.* For well treatment, completion, and workover fluids the discharge of priority pollutants is prohibited except in trace amounts. Information on the specific chemical composition of any additives containing priority pollutants shall be recorded.

*Note:* If materials added downhole as well treatment, completion, or workover fluids contain no priority pollutants, the discharge is assumed not to contain priority pollutants except possibly in trace amounts.

(b) Monitoring Requirements

This discharge shall be considered produced water for monitoring purposes when commingled with produced water.

*Free Oil.* Monitoring shall be performed using the static sheen test method once per day when discharging and the facility is manned. The number of days a sheen is observed must be recorded.

*Oil and Grease.* Monitoring shall be performed once per month. The sample type may be either grab or a 24-hour composite consisting of the arithmetic average of the results of 4 grab samples taken within the 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. The analytical method is that specified at 40 CFR part 136.

6. Sanitary Waste

(a) Prohibitions

*Solids.* No floating solids may be discharged. Observations must be made once per day, during daylight in the vicinity of sanitary waste outfalls, following either the morning or midday meals and at the time during maximum estimated discharge.

(b) Limitations

*Residual Chlorine.* Total residual chlorine is a surrogate parameter for fecal coliform. Discharge of total residual chlorine must meet a minimum of 1 mg/l and shall be maintained as close to this concentration as possible. A grab sample must be taken once per month and the concentration recorded (approved method, Hach CN–66–DPD).

*Biochemical Oxygen Demand (BOD5) and Total Suspended Solids (TSS)* Sanitary waste water discharges of less than 2,500 gallons per day shall not exceed a daily maximum and monthly average concentration of 45 mg/l for BOD5 and 45 mg/l for TSS. The monitoring frequency shall be once per six months.

7. Domestic Waste

(a) Prohibitions

*Solids.* No floating solids or foam shall be discharged.

(b) Monitoring Requirements

An observation shall be made once per day during daylight in the vicinity of domestic waste outfalls following the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

8. Miscellaneous Discharges

Desalination Unit Discharge
Diatomaceous Earth Filter Media
Blowout Preventer Fluid
Uncontaminated Ballast Water
Uncontaminated Bilge Water
Mud, Cuttings, and Cement at the Sea floor
Uncontaminated Freshwater
Uncontaminated Seawater
Boiler Blowdown
Source Water and Sand
Excess Cement Slurry

(a) Limitations

*Free Oil.* No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

*Floating Solids or Visible Foam.* There shall be no discharge of floating solids or visible foam.

[Exceptions] Uncontaminated seawater, uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water may be discharged from platforms that are on automatic purge systems without monitoring for free oil when the facilities are not manned. Additionally, discharges at the sea floor of: muds and cuttings prior to installation of the marine riser, cement, and blowout preventer fluid may be discharged without monitoring with the static sheen test when conditions make observation of a sheen on the surface of the receiving water impossible.

9. Miscellaneous Discharges of Seawater and Freshwater Which Have Been Chemically Treated

Excess seawater which permits the continuous operation of fire control and utility lift pumps

Excess seawater from pressure maintenance and secondary recovery projects
Water released during training of personnel in fire protection
Seawater used to pressure test new piping and new pipelines
Ballast water
Once Through Non-contact cooling water
Desalinization unit discharge

(a) Limitations

*Treatment Chemicals.* The concentration of treatment chemicals in discharged seawater or freshwater shall not exceed the most stringent of the following three constraints:

(1) the maximum concentrations and any other conditions specified in the EPA product registration labeling if the chemical is an EPA registered product
(2) the maximum manufacturer's recommended concentration
(3) 500 mg/l

*Free Oil.* No free oil shall be discharged. Discharge is limited to those times that a visible sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

*Toxicity.* The 48-hour minimum and monthly average minimum No Observable Effect Concentration (NOEC) must be equal to or greater than the critical dilution concentration specified in Table 3 of this permit. Critical dilution shall be determined using Table 3 of this permit and is based on the discharge rate, discharge pipe diameter, and water depth between the discharge pipe and the bottom. The monthly average minimum NOEC value is defined as the arithmetic average of all 48-hour average NOEC values determined during the month.

(b) Monitoring Requirements

*Flow.* Once per month, an estimate of the flow (MGD) must be recorded.

*Toxicity.* The required frequency of testing for continuous discharges shall be determined as follows:

| Discharge rate | Toxicity testing frequency |
|---|---|
| 0–499 bbl/day ..... | Once per year. |
| 500–4,599 bbl/day ..... | Once per quarter. |
| 4,600 bbl/day and above. | Once per month. |

Intermittent or batch discharges shall be monitored once per discharge but are required to be monitored no more frequently than the corresponding frequencies shown above for continuous discharges.

Samples shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of the discharge. Methods to increase dilution previously described for produced water in Part I.B.3.a also apply to seawater and freshwater discharges which have been chemically treated.

If the permittee has been compliant with this toxicity limit for one full year (12 consecutive months) for a continuous discharge of chemically treated seawater or freshwater, the required testing frequency shall be reduced to once per year for that discharge.

*Section C. Other Discharge Limitations*

1. Halogenated Phenolic Compounds

There shall be no discharge of halogenated phenolic compounds as a part of any waste stream authorized in this permit.

2. Dispersants, Surfactants, and Detergents

The facility operator shall minimize the discharge of dispersants, surfactants, and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers.

3. Garbage

The discharge of garbage is prohibited (See Part II.G.30).

5. Area of Biological Concern

There shall be no discharge in Areas of Biological Concern, including marine sanctuaries.

*Section D. Other Conditions*

1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

2. Produced Water Toxicity Testing Requirements (7-Day Chronic NOEC Marine Limits)

The approved test methods for permit compliance are identified in 40 CFR part 136 and published at 60 *FR* 53528.

(a) The permittee shall utilize the *Mysidopsis bahia* (Mysid shrimp) chronic static renewal 7-day survival and growth test using Method 1007.0.

(b) The permittee shall utilize the *Menidia beryllina* (Inland Silverside minnow) chronic static renewal 7-day larval survival and growth test (Method 1006.0).

(c) When the testing frequency stated above is less than monthly and the effluent fails the survival endpoint at the low-flow effluent concentration (critical dilution), the permittee shall be considered in violation of this permit limit and the frequency for the affected species will increase to monthly until such time compliance with the Lethal No Observed Effect Concentration (NOEC) effluent limitation is demonstrated for a period of three consecutive months, at which time the permittee may return to the testing frequency stated in Part I.B.3.c of this permit. During the period the permittee is out of compliance, test results shall be reported on the DMR for that reporting period.

(d) This permit may be reopened to require chemical specific effluent limits, additional testing, and/or other appropriate actions to address toxicity.

(e) The permittee shall prepare a full report of the results of all tests conducted pursuant to this section in accordance with the Report Preparation Section of ''Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms,'' EPA/600/4–91/003, or the most current publication, for every valid or invalid toxicity test initiated whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of Part II.C.3 of this permit. The permittee shall submit full reports only upon the specific request of the Agency.

(f) In accordance with Part II.D.4 of this permit, the permittee shall report on the DMR for the reporting period the lowest Whole Effluent Lethality values determined for either species for the 30-Day Average Minimum and 7-Day Minimum under Parameter No. 22414, and the permittee shall report the results of the valid toxicity test as follows:

1. *Menidia Beryllina* (Inland Silverside Minnow)

(A) If the Inland Silverside minnow No Observed Effect Concentration (NOEC) for survival is less than the critical effluent dilution, enter a ''1''; otherwise, enter a ''0''. Parameter No. TLP6B on the Discharge Monitoring Report.

(B) Report the Inland Silverside minnow NOEC value for survival,

Parameter No. TOP6B on the Discharge Monitoring Report.

(C) Report the Inland Silverside minnow NOEC value for growth, Parameter No. TPP6B on the Discharge Monitoring Report.

(D) Report the % coefficient of variation (larger of critical dilution and control), Parameter No. TQP6B on the Discharge Monitoring Report.

2. *Mysidopsis Bahia* (Mysid Shrimp)

(A) If the Mysid shrimp NOEC for survival is less than the critical effluent dilution, enter a ''1''; otherwise, enter a ''0''. Parameter No. TLP3E on the Discharge Monitoring Report.

(B) Report the Mysid shrimp NOEC value for survival, Parameter No. TOP3E on the Discharge Monitoring Report.

(C) Report the Mysid shrimp NOEC value for growth, Parameter No. TPP3E on the Discharge Monitoring Report.

(D) Report the % coefficient of variation (larger of critical dilution and control), Parameter No. TQP3E on the Discharge Monitoring Report.

3. Chemically Treated Seawater and Freshwater Toxicity Testing Requirements (48-Hour Acute NEOC Marine Limits)

The approved test methods for permit compliance are identified in 40 CFR part 136 and published at 60 FR 53528.

(a) The permittee shall utilize the *Mysidopsis bahia* (Mysid shrimp) acute static renewal 48-hour definitive toxicity test using EPA/600/4–90/027F.

(b) *Menidia beryllina* (Inland Silverside minnow) acute static renewal 48-hour definitive toxicity test using EPA/600/4–90/027F.

(c) When the testing frequency stated above is less than monthly and the effluent fails the survival endpoint at the low-flow effluent concentration (critical dilution), the permittee shall be considered in violation of this permit limit and the frequency for the affected species will increase to monthly until such time compliance with the Lethal No Observed Effluent Concentration (NOEC) effluent limitation is demonstrated for a period of three consecutive months, at which time the permittee may return to the testing frequency stated in Part I.B.9.b of this permit. During the period the permittee is out of compliance, test results shall be reported on the DMR for that reporting period.

(d) This permit may be reopened to require chemical specific effluent limits, additional testing, and/or other appropriate actions to address toxicity.

(e) The permittee shall prepare a full report of the results of all tests conducted pursuant to this section in accordance with the Report Preparation Section of ''Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,'' EPA/600/4–90/027F, or the most current publication, for every valid or invalid toxicity test initiated whether carried to completion or not. The permittee shall retain each full report pursuant to the provisions of Part II.C.3 of this permit. The permittee shall submit full reports only upon the specific request of the Agency.

(f) In accordance with Part II.D.4 of this permit, the permittee shall report on the DMR for the reporting period the lowest Whole Effluent Lethality values determined for either species for the 30-Day Average Minimum and 48-Hour Minimum under Parameter No. 22414, and the permittee shall report the results of the valid toxicity test as follows:

1. *Menidia Beryllina* (Inland Silverside Minnow)

(A) If the Inland Silverside minnow No Observed Effect Concentration (NOEC) for survival is less than the critical effluent dilution, enter a ''1''; otherwise, enter a ''0''. Parameter No. TEM6B on the Discharge Monitoring Report.

(B) Report the Inland Silverside minnow NOEC value for survival, Parameter No. TOM6B on the Discharge Monitoring Report.

2. *Mysidopsis Bahia* (Mysid Shrimp)

(A) If the Mysid shrimp NOEC for survival is less than the critical effluent dilution, enter a ''1''; otherwise, enter a ''0''. Parameter No. TEM3E on the Discharge Monitoring Report.

(B) Report the Mysid shrimp NOEC value for survival, Parameter No. TOM3E on the Discharge Monitoring Report.

4. Radionuclide Test

The approved test methods for monitoring produced water for radionuclides are:

Radium 226: Method Number 7500–Ra C, Standard Methods for the Examination of Water and Wastewater, Eighteenth Edition, APHA, AWWA, and WPCF.

Radium 228: Method Number 7500–Ra D, Standard Methods for the Examination of Water and Wastewater, Eighteenth Edition, APHA, AWWA, and WPCF.

**Part II. Standard Conditions for NPDES Permits**

*Section A. General Conditions*

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended, (herein-after known as the ''Act'') as well as ALL applicable regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding Part II.A.5, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR part 122.6 and any subsequent amendments.

5. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR part 122.62–64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

7. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

8. Criminal and Civil Liability

Except as provided in permit conditions on ''Bypassing'' and ''Upsets,'' nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

9. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State Law or regulation under authority preserved by section 510 of the Act.

11. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

*Section B. Proper Operation and Maintenance*

1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b and 4.c.

b. Notice.

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. Prohibition of Bypass.

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and,

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sewage sludges, filter backwash, or other pollutants removed

in the course of treatment or wastewater control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

*Section C. Monitoring and Records*

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory facilities while they are discharging under the operators control and at a specific shore-based site for the remainder of the 3-year retention period.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit or approved by the Director.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

6. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from true discharge rates throughout the range of expected discharge volumes.

*Section D. Reporting Requirements*

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR part 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to effluent limitations in the permit.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such requirements as may be necessary under the Act.

4. Discharge Monitoring Reports and Other Reports

The operator of each lease block shall be responsible for submitting monitoring results for all facilities within each lease block. The monitoring results for the facilities (platform, drilling ship, or semisubmersible) within the particular lease block shall be summarized on the annual Discharge Monitoring Report for that lease block.

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) form (EPA No. 3320–1). In addition, the highest monthly average for all activity within each lease block shall be reported. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration.

If any category of waste (discharge) is not applicable for all facilities within the lease block, due to the type of operations (e.g., drilling, production) no reporting is required; however, ''no discharge'' must be recorded for those categories on the DMR. If all facilities within a lease block have had no activity during the reporting period then ''no activity'' must be written on the DMR. Operators may list a summary of all lease blocks where there is no activity on one DMR. All pages of the DMR must be signed and certified as required by Part II.D.11 and returned when due.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of

this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified.

7. One Hour and Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 1 hour from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. As required by LAC33.I.3915, in the event of an unauthorized discharge that does cause an emergency condition, the discharger shall notify the DEQ hotline by telephone at (504) 925–6595 (collect calls accepted 24 hours a day) immediately (a reasonable period of time after taking prompt measures to determine the nature, quantity, and potential off-site impact of a release, considering the exigency of the circumstances), but in no case later than one hour after learning of the discharge. (An emergency condition is any condition which could reasonably be expected to endanger the health, safety of the public, cause significant adverse impact to the land, water, or air environment, or cause severe damage to property.) Notification required by this section will be made regardless of the amount of discharge. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Any discharge containing a pollutant in a quantity which exceeds any reportable quantity specified in the ''Notification Regulations and Procedures for Unauthorized Discharges'', LAC 33: I. Subchapter (E), unless specifically authorized in this permit.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within the time constraints stipulated by Part II.D.7.a and b.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under Parts II.D.4 and D.7 at the time monitoring reports are submitted. The reports shall contain the information listed at Part II.D.7.

9. Other Information

Where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, he shall promptly submit such facts or information.

10. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation—by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship—by a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency—by either a principal executive officer or ranking elected official. For purposes of this election, a principal executive officer of a Federal agency includes:

(a) The chief executive officer of the agency, or

(b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

11. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR part 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

*Section E. Penalties for Violations of Permit Conditions*

1. Criminal

a. Negligent Violations. The Act provides that any person who negligently violates permit conditions implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. Knowing Violations. The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318 or 405 of the Act is subject

to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309.c.4 of the Clean Water Act)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. Class I Penalty. Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

b. Class II penalty. Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

*Section F. Additional General Permit Conditions*

1. When the Director May Require Application for an Individual NPDES Permit

The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitations guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Director, are more appropriately controlled under an individual permit than under a general permit.

(g) The bioaccumulation monitoring results show concentrations of the listed pollutants in excess of levels safe for human consumption.

The Director may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. When an Individual NPDES Permit May Be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of this individual permit.

(c) A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

3. Permit Reopener Clause

If applicable new or revised effluent limitations guidelines or New Source Performance Standards covering the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435) are promulgated in accordance with sections 301(b), 304(b)(2), and 307(a)(2), and the new or revised effluent limitations guidelines or New Source Performance Standards are more stringent than any effluent limitations in this permit or control a pollutant not limited in this permit, the permit may, at the Director's discretion, be modified to conform to the new or revised effluent limitations guidelines.

Notwithstanding the above, if an offshore oil and gas extraction point source discharge facility is subject to the ten year protection period for new source performance standards under the Clean Water Act section 306(d), this reopener clause may not be used to modify the permit to conform to more stringent new source performance standards or technology based standards developed under section 301(b)(2) during the ten year period specified in 40 CFR part 122.29(d).

The Director may modify this permit upon meeting the conditions set forth in this reopener clause.

*Section G. Definitions*

All definitions contained in section 502 of the Act shall apply to this permit and are incorporated herein by references. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. ''Act'' means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. ''Administrator'' means the Administrator of the U.S. Environmental Protection Agency.

3. ''Annual Average'' means the average of all discharges sampled and/or measured during a calendar year in which daily discharges are sampled and/or measured, divided by the number of discharges sampled and/or measured during such year.

4. ''Applicable effluent standards and limitations'' means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

5. ''Applicable water quality standards'' means all water quality standards to which a discharge is subject under the Act.

6. ''Areas of Biological Concern'' means a portion of the territorial seas identified by EPA, in consultation with the Department of Interior as containing potentially productive or unique biological communities or as being

potentially sensitive to discharges associated with oil and gas activities.

7. ''Blow-Out Preventer Control Fluid'' means fluid used to actuate the hydraulic equipment on the blow-out preventer or subsea production wellhead assembly.

8. ''Boiler Blowdown'' means discharges from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

9. ''Bulk Discharge'' any discharge of a discrete volume or mass of effluent from a pit tank or similar container that occurs on a one-time, infrequent or irregular basis.

10. ''Bypass'' means the intentional diversion of waste streams from any portion of a treatment facility.

11. ''Completion Fluids'' means salt solutions, weighted brines, polymers and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing, and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

12. ''Daily Discharge'' means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day. Daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

13. ''Daily Average'' (also known as monthly average) discharge limitations means the highest allowable average of daily discharge(s) over a calendar month, calculated as the sum of all daily discharge(s) measured during a calendar month divided by the number of daily discharge(s) measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all daily discharge(s) of concentration determined during the calendar month where C=daily concentration, F=daily flow, and n=number of daily samples; daily average discharge=

$$\frac{C_1F_1 + C_2F_2 + \cdots + C_nF_n}{F_1 + F_2 + \cdots + F_n}.$$

14. ''Daily Maximum'' discharge limitations means the highest allowable ''daily discharge'' during the calendar month.

15. ''Desalinization Unit Discharge'' means wastewater associated with the process of creating freshwater from seawater.

16. ''Deck Drainage'' means any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities covered under this permit.

17. ''Development Drilling'' means the drilling of wells required to efficiently produce a hydrocarbon formation or formations.

18. ''Development Facility'' means any fixed or mobile structure that is engaged in the drilling of productive wells.

19. ''Diatomaceous Earth Filter Media'' means filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

20. ''Diesel Oil'' means the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids.

21. ''Director'' means the State Director or an authorized representative.

22. ''Domestic Waste'' means material discharged from galleys, sinks, showers and baths, safety showers, eye wash stations, hand washing stations, fish cleaning stations, and laundries. Domestic Waste does not include drainage from toilets, urinals, hospitals, and cargo spaces.

23. ''Drill Cuttings'' means particles generated by drilling into the subsurface geological formations including cured cement carried to the surface with the drilling fluid.

24. ''Drilling Fluids'' means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil based drilling fluids has diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase.

25. ''Environmental Protection Agency'' (EPA) means the U.S. Environmental Protection Agency.

26. ''Excess Cement Slurry'' means the excess mixed cement, including additives and wastes from equipment wash down, after a cementing operation.

27. ''Exploratory Facility'' means any fixed or mobile structure that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

28. ''Fecal Coliform Bacteria Sample'' consists of one effluent grab portion collected during a 24-hour period at peak loads.

29. ''Grab sample'' means an individual sample collected in less than 15 minutes.

30. ''Garbage'' means all kinds of food waste, wastes generated in living areas on the facility, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the facility and liable to be disposed of continuously or periodically, except domestic waste water such as dishwater, and those substances that are defined or listed in other Annexes to MARPOL 73/78

31. ''Inverse Emulsion Drilling Fluids'' means an oil-based drilling fluid which also contains a large amount of water.

32. ''Live bottom areas'' means those areas which contain biological assemblages consisting of such sessile invertebrates as seas fans, sea whips, hydroids, anemones, ascideians sponges, bryozoans, seagrasses, or corals living upon and attached to naturally occurring hard or rocky formations with fishes and other fauna.

33. ''Maintenance waste'' means materials collected while maintaining and operating the facility, including, but not limited to, soot, machinery deposits, scraped paint, deck sweepings, wiping wastes, and rags.

34. ''Muds, Cuttings, and Cement at the Sea floor'' means discharges that occur at the sea floor prior to installation of the marine riser and during marine riser disconnect, well abandonment and plugging operations.

35. ''National Pollutant Discharge Elimination System'' (NPDES) means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under

section 307, 318, 402, and 405 of the Act.

36. ''New Source'' means any facility or activity that meets the definition of ''new source'' under 40 CFR part 122.2 and meets the criteria for determination of new sources under 40 CFR part 122.29(b) applied consistently with all of the following definitions:

(a) The term ''water area'' as used in the term ''site'' in 40 CFR parts 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development, or production activities.

(b) The term ''significant site preparation work'' as used in 40 CFR part 122.29 shall mean the process of surveying, clearing, or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

37. ''Operational waste'' means all cargo associated waste, maintenance waste, cargo residues, and ashes and clinkers from incinerators and coal burning boilers.

38. ''Packer Fluid'' means low solids fluids between the packer, production string and well casing. They are considered to be workover fluids.

39. ''Priority Pollutants'' means those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act and 40 CFR part 401.15.

40. ''Produced Sand'' means slurried particles used in hydraulic fracturing, the accumulated formation sands, and scale particles generated during production. Produced sand also includes desander discharge from produced water waste stream and blowdown of water phase from the produced water treating system.

41. ''Produced Water'' means the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

42. ''Production Facility'' means any fixed or mobile structure that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

43. ''Sanitary Waste'' means human body waste discharged from toilets and urinals.

44. ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

45. ''Sheen'' means a silvery or metallic sheen, gloss, or increased reflectivity, visual color or iridescence on the water surface.

46. ''Source Water and Sand'' means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery including the entrained solids.

47. ''Spotting'' means the process of adding a lubricant (spot) downhole to free stuck pipe.

48. ''Territorial Seas'' means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

49. ''Trace Amounts'' means that if materials added downhole as well treatment, completion, or workover fluids do not contain priority pollutants then the discharge is assumed not to contain priority pollutants, except possibly in trace amounts.

50. ''Uncontaminated Ballast/Bilge Water'' means seawater added or removed to maintain proper draft.

51. ''Uncontaminated Freshwater'' means freshwater which is discharged without the addition of chemicals; included are (1) discharges of excess freshwater that permit the continuous operation of fire control and utility lift pumps, (2) excess freshwater from pressure maintenance and secondary recovery projects, (3) water released during training and testing of personnel in fire protection, and (4) water used to pressure test new piping.

52. ''Uncontaminated Seawater'' means seawater which is returned to the sea without the addition of chemicals. Included are (1) discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps (2) excess seawater from pressure maintenance and secondary recovery projects (3) water released during the training and testing of personnel in fire protection (4) seawater used to pressure test new piping, and (5) once through noncontact cooling water which has not been treated with biocides.

53. ''Upset'' means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

54. ''Weekly Average'' means the highest allowable average of daily discharge(s) over a calendar week, calculated as the sum of all daily discharge(s) measured during a calendar week divided by the number of daily discharge(s) measured during that week. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all daily discharge(s) of concentration determined during the calendar week where C=daily concentration, F=daily flow, and n=number of daily samples; daily average discharge=

$$\frac{C_1F_1 + C_2F_2 + \cdots + C_nF_n}{F_1 + F_2 + \cdots + F_n}.$$

55. ''Well Treatment Fluids'' mean any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents, and propping agents.

56. ''Workover Fluids'' mean salt solutions, weighted brines, polymers, and other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. High solids drilling fluids used during work over operations are not considered work over fluids by definition and therefore discharge is prohibited. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

57. The term ''MGD'' shall mean million gallons per day.

58. The term ''mg/l'' shall mean milligrams per liter or parts per million (ppm).

59. The term ''ug/l'' shall mean micrograms per liter or parts per billion (ppb).

## Appendix A

TABLE 1–A.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR 2 METERS AND LESS

| Discharge rate (bbl/day) | Pipe diameter (inches) | | | | | |
|---|---|---|---|---|---|---|
| | >0″ to 5″ | ≥5″ to 7″ | ≥7″ to 9″ | ≥9″ to 11″ | ≥11″ to 15″ | ≥15″ |
| ≥500 | 0.26 | 0.26 | 0.26 | 0.11 | 0.1 | 0.09 |
| 501 to 1,000 | 0.66 | 0.66 | 0.66 | 0.66 | 0.66 | 0.66 |
| 1,001 to 2,000 | 1.44 | 1.44 | 1.44 | 1.44 | 1.44 | 1.44 |
| 2,001 to 3,000 | 2.63 | 2.2 | 2.2 | 2.2 | 2.2 | 2.2 |
| 3,001 to 4,000 | 4.2 | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| 4,001 to 5,000 | 5.6 | 3.6 | 3.6 | 3.6 | 3.6 | 3.6 |
| 5,001 to 7,500 | 7.6 | 6.4 | 5.3 | 5.3 | 5.3 | 5.3 |
| 7,501 to 10,000 | 8.8 | 9.4 | 6.8 | 6.8 | 6.8 | 6.8 |
| 10,001 to 15,000 | 10.5 | 12.25 | 10.8 | 9.1 | 9.1 | 9.1 |
| 15,001 to 20,000 | 11.5 | 13.6 | 14.8 | 10.9 | 10.9 | 10.1 |
| 20,001 to 35,000 | 13.0 | 15.6 | 17.4 | 18.7 | 15.4 | 14.4 |
| 35,001 to 50,000 | 13.7 | 16.5 | 18.5 | 20.0 | 21.1 | 16.6 |
| 50,001 to 75,000 | 16.7 | 17.3 | 19.5 | 21.0 | 22.25 | 19.0 |

bbl/day means barrels per day.

TABLE 1–B.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR GREATER THAN 2 METERS TO 4 METERS

| Discharge rate (bbl/day) | Pipe diameter (inches) | | | | | |
|---|---|---|---|---|---|---|
| | >0'' to 5'' | ≥5'' to 7'' | ≥7'' to 9'' | ≥9'' to 11'' | ≥11'' to 15'' | ≥15'' |
| ≥500 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 |
| 501 to 1,000 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 | 0.2 |
| 1,001 to 2,000 | 0.36 | 0.36 | 0.36 | 0.36 | 0.36 | 0.36 |
| 2,001 to 3,000 | 0.74 | 0.65 | 0.65 | 0.65 | 0.65 | 0.65 |
| 3,001 to 4,000 | 1.1 | 0.86 | 0.86 | 0.86 | 0.86 | 0.86 |
| 4,001 to 5,000 | 1.55 | 1.05 | 1.05 | 1.05 | 1.05 | 1.05 |
| 5,001 to 7,500 | 3.0 | 1.74 | 1.5 | 1.5 | 1.5 | 1.5 |
| 7,501 to 10,000 | 4.6 | 2.6 | 2.0 | 2.0 | 2.0 | 2.0 |
| 10,001 to 15,000 | 5.8 | 4.9 | 3.2 | 2.8 | 2.8 | 2.8 |
| 15,001 to 20,000 | 6.2 | 7.6 | 5.0 | 3.6 | 3.5 | 3.5 |
| 20,001 to 35,000 | 6.7 | 8.8 | 9.8 | 7.5 | 5.9 | 5.6 |
| 35,001 to 50,000 | 7.0 | 9.2 | 11.0 | 11.2 | 8.9 | 6.9 |
| 50,001 to 75,000 | 7.15 | 9.5 | 11.4 | 13.0 | 13.5 | 8.5 |

bbl/day means barrels per day.

TABLE 1–C.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR GREATER THAN 4 METERS TO 6 METERS

| Discharge rate (bbl/day) | Pipe diameter (inches) | | | | | |
|---|---|---|---|---|---|---|
| | >0″ to 5″ | ≥5″ to 7″ | ≥7″ to 9″ | ≥9″ to 11″ | ≥11″ to 15″ | ≥15″ |
| ≥500 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 |
| 501 to 1,000 | 0.09 | 0.09 | 0.09 | 0.09 | 0.09 | 0.09 |
| 1,001 to 2,000 | 0.17 | 0.17 | 0.17 | 0.17 | 0.17 | 0.17 |
| 2,001 to 3,000 | 0.26 | 0.24 | 0.24 | 0.24 | 0.24 | 0.24 |
| 3,001 to 4,000 | 0.37 | 0.31 | 0.31 | 0.31 | 0.31 | 0.31 |
| 4,001 to 5,000 | 0.6 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 |
| 5,001 to 7,500 | 1.14 | 0.8 | 0.7 | 0.7 | 0.7 | 0.7 |
| 7,501 to 10,000 | 1.8 | 1.1 | 0.9 | 0.9 | 0.9 | 0.9 |
| 10,001 to 15,000 | 3.5 | 2.0 | 1.4 | 1.3 | 1.3 | 1.3 |
| 15,001 to 20,000 | 4.3 | 3.1 | 2.1 | 1.7 | 1.7 | 1.7 |
| 20,001 to 35,000 | 4.6 | 6.2 | 4.8 | 3.6 | 2.8 | 2.7 |
| 35,001 to 50,000 | 4.8 | 6.5 | 7.2 | 5.7 | 4.6 | 3.6 |
| 50,001 to 75,000 | 4.9 | 6.6 | 8.2 | 8.8 | 7.3 | 4.8 |

bbl/day means barrels per day.

TABLE 1–D. PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR GREATER THAN 6 METERS TO 9 METERS

| Discharge rate (bbl/day) | Pipe diameter (inches) | | | | | |
|---|---|---|---|---|---|---|
| | >0″ to 5′ | ≥5″ to 7″ | ≥7″ to 9″ | ≥9″ to 11″ | ≥11′ to 15″ | ≥15″ |
| ≤500 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 |
| 501 to 1,000 | 0.06 | 0.06 | 0.06 | 0.06 | 0.06 | 0.06 |
| 1,001 to 2,000 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 |
| 2,001 to 3,000 | 0.15 | 0.14 | 0.14 | 0.14 | 0.14 | 0.14 |
| 3,001 to 4,000 | 0.21 | 0.18 | 0.18 | 0.18 | 0.18 | 0.18 |
| 4,001 to 5,000 | 0.27 | 0.22 | 0.22 | 0.22 | 0.22 | 0.22 |
| 5,001 to 7,500 | 0.6 | 0.43 | 0.41 | 0.41 | 0.41 | 0.41 |
| 7,501 to 10,000 | 0.9 | 0.62 | 0.53 | 0.53 | 0.53 | 0.55 |
| 10,001 to 15,000 | 1.8 | 1.1 | 0.83 | 0.76 | 0.76 | 0.76 |
| 15,001 to 20,000 | 2.8 | 1.6 | 1.2 | 1.0 | 1.0 | 1.0 |
| 20,001 to 35,000 | 3.6 | 3.7 | 2.6 | 2.0 | 1.7 | 1.6 |
| 35,001 to 50,000 | 3.7 | 5.0 | 4.3 | 3.3 | 2.6 | 2.2 |
| 50,001 to 75,000 | 3.7 | 5.1 | 6.4 | 5.4 | 4.4 | 3.1 |

bbl/day means barrels per day.

TABLE 1–E.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN THE DISCHARGE PIPE AND THE SEA FLOOR GREATER THAN 9 METERS

| Discharge rate (bbl/day) | Pipe diameter (inches) | | | | | |
|---|---|---|---|---|---|---|
| | >0″ to 5″ | ≥5″ to 7″ | ≥7″ to 9″ | ≥9″ to 11″ | ≥11′ to 15″ | ≥15″ |
| ≤500 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 |
| 501 to 1,000 | 0.06 | 0.06 | 0.06 | 0.06 | 0.06 | 0.06 |
| 1,001 to 2,000 | 0.09 | 0.09 | 0.09 | 0.09 | 0.09 | 0.09 |
| 2,001 to 3,000 | 0.11 | 0.1 | 0.1 | 0.1 | 0.1 | 0.1 |
| 3,001 to 4,000 | 0.13 | 0.12 | 0.12 | 0.12 | 0.12 | 0.12 |
| 4,001 to 5,000 | 0.15 | 0.13 | 0.13 | 0.13 | 0.13 | 0.13 |
| 5,001 to 7,500 | 0.22 | 0.18 | 0.18 | 0.18 | 0.18 | 0.18 |
| 7,501 to 10,000 | 0.42 | 0.32 | 0.3 | 0.3 | 0.3 | 0.3 |
| 10,001 to 15,000 | 0.8 | 0.53 | 0.44 | 0.42 | 0.42 | 0.42 |
| 15,001 to 20,000 | 1.3 | 0.8 | 0.62 | 0.54 | 0.54 | 0.54 |
| 20,001 to 35,000 | 2.7 | 1.8 | 1.3 | 1.0 | 0.9 | 0.9 |
| 35,001 to 50,000 | 2.7 | 3.0 | 2.2 | 1.7 | 1.4 | 1.2 |
| 50,001 to 75,000 | 2.8 | 3.9 | 3.7 | 3.0 | 2.4 | 1.7 |

bbl/day means barrels per day.

TABLE 2.—MINIMUM VERTICAL PORT SEPARATION DISTANCE TO AVOID INTERFERENCE

| Port flow rate (bbl/day) | Minimum separation distance (m) |
|---|---|
| 0–500 | 2.2 |
| 501–1000 | 2.7 |
| 1001–2000 | 4.7 |
| 2001–5000 | 4.8 |
| 5001 and Greater | 6.6 |

TABLE 3.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR SEAWATER AND FRESHWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED

| Depth difference** (meters) | Discharge rate (bbl/day) | Pipe diameter | | | |
|---|---|---|---|---|---|
| | | >0″ to 2″ | >2″ to 4″ | >4″ to 6″ | >6″ |
| 0 to 3 | 0 to 1,000 | 11.4 | 5.1 | 5.1 | 6.3 |
| | 1,001 to 10,000 | 38 | 53 | 62 | 67 |
| | Greater than 10,000 | 49 | 66 | 74 | 77 |
| >3 to 5 | 0 to 1,000 | 4.0 | 4.8 | 6.6 | 6.2 |
| | 1,001 to 10,000 | 16.1 | 25 | 30 | 23 |
| | Greater than 10,000 | 23.6 | 33.3 | 39 | 49 |
| >5 to 7 | 0 to 1,000 | 4.0 | 4.8 | 5.6 | 6.2 |
| | 1,001 to 10,000 | 12.8 | 21 | 18.1 | 18.8 |
| | Greater than 10,000 | 16.7 | 25.4 | 31.2 | 34.4 |
| Greater than 7 | 0 to 1,000 | 4.0 | 4.8 | 5.6 | 6.2 |

TABLE 3.—CRITICAL DILUTIONS (PERCENT EFFLUENT) FOR TOXICITY LIMITATIONS FOR SEAWATER AND FRESHWATER TO WHICH TREATMENT CHEMICALS HAVE BEEN ADDED—Continued

| Depth difference** (meters) | Discharge rate (bbl/day) | Pipe diameter | | | |
|---|---|---|---|---|---|
| | | >0″ to 2″ | >2″ to 4″ | >4″ to 6″ | >6″ |
| | 1,001 to 10,000 | 9.8 | 16.3 | 18.1 | 18.8 |
| | Greater than 10,000 | 12.4 | 18.8 | 25.2 | 26.3 |

Depth Difference means the distance in water depth between the discharge pipe and the seafloor.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS

| Discharge | Regulated and monitored discharged parameter | Discharge limitation/prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/method | Recorded value(s) |
| Drilling fluid | ..... | No Discharge | | | |
| Drill cuttings | ..... | No Discharge | | | |
| Deck drainage | Free Oil | No free oil | Once/day(*2) | Visual sheen | Number of days sheen observed. |
| Produced water | Oil and grease | 42 mg/l daily max. 29 mg/l monthly average | One/month | Grab (*3) | Dail max., monthly average. |
| | Toxicity | 7-day average min. NOEC (*10) and monthly average min. NOEC (*10). | Dilution Dependent (*9). | Grab | Lowest NOEC for either of the two species. |
| | Benzene, Lead, Total Phenols, and Thallium. | See Part I.B.3.a | Dilution Dependent (*9). | Grab | Daily max., monthly average. |
| | Radium 226 and 228. | Monitor | Dilution Dependent (*9). | Grab | pCi/liter. |
| | Flow (MGD) | Monitor | Once/month | Estimate | Monthly Average. |
| Produced Sand | ..... | No Discharge | | | |
| Well treatment fluids (*4) completion fluids (*4), and workover fluids (*4) (includes packer fluids). | Free oil | No free oil | Once day (*1) | Statics sheen | Number of days sheen observed. |
| | Oil and Grease | 42 mg/l daily maxo., 29 mg/l monthly avg. | Once/month | Grab (*3) | Daily max., monthly average. |
| Sanitary waste | Residual chlorine | 1 mg/l (minimum) | Once/month | Grab | Concentration. |
| | Solids | No Floating Solids | Once/day | Observation (*8) | Number days solids observed. |
| | BOD5 (*6) | 45 mg/l | Once/six months | Grab | Concentration. |
| | TSS (*6) | 45 mg/l | Once/six month | Grap | Concentration |
| Domestic waste | Solids | No floating solids or foam. | Once/day | Observation (*8) | Number of days observed. |
| Miscellaneous discharges. Desalinization unit discharge; blowout preventer fluid; uncontaminated ballast water; uncontaminated bilge water; uncontaminated freshwater; mud, cuttings and cement to sea floor; uncontaminted seawater; boiler blowdown; source water and sand; diatomaceous earth filter media; excess cement slurry. | Free oil | No free oil | Once/week (*5) | Visual sheen | Number of days sheen observed. |

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

| Discharge | Regulated and monitored discharged parameter | Discharge limitation/prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/method | Recorded value(s) |
| Miscellaneous discharges of seawater and freshwater to which treatment chemicals have been added: excess seawater which permits the continuous operation of fire control and utility lift pumps, excess seawater from pressure maintenance and secondary recovery projects, water released during training of personnel in fire protection, seawater used to pressure test new piping and new pipelines, ballast water, once-through non-contact cooling water, desalinization unit discharge. | Treatment chemicals. | Most stringent of: EPA label registration, maximum manufacturers recommended dose, or 500 mg/l | | | |
| | Free oil ..... | No free oil ..... | 1/week ..... | Visible sheen ..... | Number of days sheen observed. |
| | Toxicity ..... | 48-hour average min. NOEC and monthly avg minimum NOEC (*12). | Rate Dependent (*11). | Grab ..... | Lowest NOEC observed for either of the two species. |

**Footnotes**

*1 When discharging.

*2 When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.

*3 May be based on a single grab sample or the arithmetic average of four grab sample results collected in the 24 hr. period.

*4 No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.

*5 When discharging for cement at the seafloor and blowout preventer fluid. All other miscellaneous discharges: when discharging, discharge is authorized only during times when visual sheen observation is possible, unless the static sheen method is used. Uncontaminated seawater uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water from platforms on automatic purge systems may be discharged without monitoring from platforms which are not manned.

*6 BOD5 and TSS limits only apply to discharges less than 2,500 gallons per day.

*7 Hach method CN–66 DPD approved. Minimum of 1 mg/l and maintained as close to this concentration as possible.

*8 Monitoring shall be accomplished during daylight by visual observation of the surface of the receiving water in the vicinity of sanitary and domestic waste outfalls. Observations shall be made following either the morning or midday meals at a time of maximum estimated discharge.

*9 See Part I, section B.3.c. of this permit.

*10 See Table 1, Appendix A.

*11 Once/year for discharges from 0 bbl/day to 499 bbl/day, once/quarter for discharges from 500 bbl/day to 4,599 bbl/day, and once/month for discharges of 4,600 bbl/day and greater.

*12 See Table 3, Appendix A.

[FR Doc. 97–29152 Filed 11–4–97; 8:45 am]
**BILLING CODE 6560–50–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY**: Board of Governors of the Federal Reserve System (Board)

**ACTION**: Notice and request for comment.

**SUMMARY**: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the ''Agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. Proposed revisions to the following currently approved collection of information have received approval from the Federal Financial Institutions Examination Council (FFIEC), of which the Agencies are members, and are hereby published for comment by the Board on behalf of the Agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the proposed revisions should be modified prior to the Board's submission of them to OMB for review and approval. Comments are invited on:

(a) Whether the proposed revisions to the following collection of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimate of the burden of the information collection as it is proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES**: Comments must be submitted on or before January 5, 1998.

**ADDRESSES**: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the Agencies.

Written comments should be addressed to Mr. William W. Wiles,

Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Agencies: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT**: A copy of the proposed revisions to the collection of information may be requested from the agency clearance officer whose name appears below.

Mary M. McLaughlin, Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:**

Proposal to revise the following currently approved collection of information:

*Title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks*

*Form Number*: FFIEC 002

*OMB Number*: 7100-0032.

*Frequency of Response*: Quarterly.

*Affected Public*: U.S. branches and agencies of foreign banks.

*Number of Respondents*: 513

*Total Annual Responses*: 2,052

*Estimated Time per Response*: 23.25 burden hours.

*Total Annual Burden*: 47,709 burden hours.

*General Description of Report*: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)).

Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

*Abstract*: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three Agencies.

**CURRENT ACTIONS:**

The proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) that are the subject of this notice have been approved by the FFIEC for implementation as of the March 31, 1998, report date. Nonetheless, as is customary for FFIEC 002 reporting changes, U.S. branches are advised that, for the March 31, 1998, report date, reasonable estimates may be provided for any new or revised item for which the requested information is not readily available.

The proposed revisions are summarized as follows:

**INVESTMENT SECURITIES WITH HIGH PRICE VOLATILITY**

In December 1991, the FFIEC approved and the Agencies adopted a Supervisory Policy Statement on Securities Activities which became effective on February 10, 1992 (57 FR 4029, February 3, 1992). Under this policy statement, prior to purchase and at subsequent testing dates, U.S. branches must test mortgage derivative products to determine whether they are ''high-risk'' or ''non high-risk.'' These tests measure the expected weighted average life, average life sensitivity, and price sensitivity of mortgage derivative securities for specified changes in interest rates. During 1994, the Agencies issued supervisory guidance concerning U.S. branch investments in ''structured notes'' which, in general, are debt securities (other than mortgage-backed securities) whose cash flow characteristics (coupon rate, redemption amount, or stated maturity) depend upon one or more indices and/or that have embedded forwards or options. Beginning in 1995, U.S. branches began to report the fair value and the amortized cost of their investment portfolio holdings of high-risk mortgage securities (Schedule RAL, Memoranda items 5 and 6) and structured notes (Schedule RAL, Memoranda items 7 and 8).

With regard to structured notes, supervisory attention has primarily focused on ensuring that institutions understand and evaluate the market risks associated with these instruments. Instruments that have high market value or fair value sensitivity to changes in interest rates or other appropriate market risk factors, such as foreign exchange rates, have been the primary targets of such attention. However, some of the structured notes currently reported in Schedule RAL, Memoranda items 7 and 8, may not have high market risk profiles and, in some cases, may have lower market risk volatility profiles than generic U.S. Treasury and U.S. Government agency securities. As a consequence, the Agencies are considering revising the information collected on these instruments for supervisory purposes to reflect information based on significant price volatility under specific interest rate or major factor scenarios, e.g., an estimated change in value of 20 percent or more due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points. When the Agencies develop the specific tests for significant price volatility, existing Memorandum items 7 and 8 on Schedule RAL would be replaced with revised items requesting the amortized cost and fair value of securities (other than mortgage-backed securities backed by closed-end first lien 1-4 family residential mortgages) whose price volatility exceeds the specified threshold level under the specified interest rate or major factor scenario.

For consistency, Schedule RAL, Memoranda items 5 and 6, which currently collect information on ''high-risk'' mortgage securities would be similarly replaced with items requesting the amortized cost and fair value of mortgage-backed securities backed by closed-end first lien 1-4 family residential mortgages whose price volatility exceeds a specified threshold level under a specified interest rate or major factor scenario. These mortgage-backed securities would be either the same as, or a subset of, the mortgage-backed securities currently reported in Schedule RAL, Memorandum items 5 and 6.

If the Agencies' specific tests for significant price volatility have not been developed in time to implement this proposed reporting change as of the March 31, 1998, report date, this FFIEC 002 revision would take effect at a report date later in 1998 (or thereafter) after the volatility tests have been devised.

**BALANCES DUE FROM BANKS IN HOME COUNTRY AND HOME COUNTRY CENTRAL BANK**

The Agencies use various quantitative screens to identify U.S. branches with potentially significant liquidity risk exposure. These screens primarily rely on data collected in the FFIEC 002. The Agencies have determined that the existing data collected on Schedule A, item 4.b, for balances due from banks in foreign countries and foreign central banks is not adequate for assessing U.S. branches liquidity exposure associated with their involvement with home country banks. The Agencies are therefore proposing to breakout balances due from banks in the U.S. branches home country from balances due from banks in other foreign countries.

The existing data collected in item 4.b. on balances due from Other banks in foreign countries and foreign central banks would be modified to exclude data on balances due from banks in the U.S. branches home country. This modified data would be collected in renumbered item 4.c. A new item 4.b. for balances due from Banks in home country and home country central bank would be added to collect the information needed for liquidity analysis. The Agencies believe that the proposed break out will improve their ability to assess significant liquidity exposures without adding undue reporting burden on U.S. branches.

**PLEDGED SECURITIES**

The Agencies are also proposing to add a new memorandum item to Schedule RAL for pledged securities. The new item would identify the amount of U.S. government securities included in Schedule RAL items 1.b.(1), U.S. Treasury securities, and 1.b.(2), U.S. Government agency obligations, that are pledged to secure deposits, repurchase transactions, borrowings, or for any other purpose. Based on a review of the manner in which information on pledged securities collected in the domestic bank Call Report has been used, the Agencies believe that this data would assist in determining whether securities held by a U.S. branch represent an actual source of liquidity to pay depositors or creditors or are already pledged to secure other branch obligations. The Agencies believe that the proposed item will improve their ability to assess significant liquidity exposures without adding undue reporting burden on U.S. branches.

**REQUEST FOR COMMENT**

Comments submitted in response to this Notice will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Comments also are requested on the expected effects on information currently reported in the FFIEC 002 report resulting from the implementation of those portions of Financial Accounting Standards Board Statement No. 125, ''Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities,'' that have had their effective date delayed until after December 31, 1997. The agencies are evaluating the need for additional data in this area. These portions of Statement No. 125 address collateral and secured borrowings, repurchase agreements, dollar-rolls, securities lending, and similar transactions.

In addition, comments are requested on the extent to which U.S. branches are engaged in guaranteed certificate of deposit and confirmation certificate of deposit transactions. Guaranteed certificates of deposit are certificates of deposit issued by non-U.S. branches that are guaranteed payable by U.S. branches. In contrast, confirmation certificates of deposit are certificates of deposit issued by U.S. branches that are guaranteed payable by the non-U.S. branches. The agencies are interested in obtaining information on the volume and prevalence of such transactions among U.S. branches.

Insured U.S. branches should note that the FDIC is considering amendments to its regulations on the deposit insurance assessment base (12 CFR Part 327) which may require certain changes to the FFIEC 002. Should the FDIC adopt amendments that necessitate changes to the FFIEC 002 in 1998, those changes will be separately published for public comment as required under the Paperwork Reduction Act of 1995.

Board of Governors of the Federal Reserve System, October 30, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–29148 Filed 11–3–97; 8:45 am]

**BILLING CODE 6210–01–F**

## 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 November 18, 1997.

**A. Federal Reserve Bank of San Francisco** (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

*1. Eugene Dale Fortner, Dolores Fortner, and the Eugene D. and Dolores Fortner Family Trust*, Glendale, California; to acquire additional voting shares of Verdugo Banking Company, Glendale, California.

Board of Governors of the Federal Reserve System, October 29, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–29084 Filed 11–4–97; 8:45 am]

**BILLING CODE 6210–01–F**

## 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 November 19, 1997.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Annie Ruth Williams*, Covington, Georgia; to retain voting shares of Newton Financial Management

Company, LLC, Atlanta, Georgia, and thereby indirectly retain Williams Partners, L.P., Atlanta, Georgia; FNB Newton Bancshares, Inc., Covington, Georgia; and First Newton Bank, Covington, Georgia.

*2. The 1997 Williams Family Trust*, Covington, Georgia; to retain voting shares of Williams Partners L.P., Atlanta, Georgia, and FNB Newton Bancshares, Inc., Covington, Georgia, and thereby indirectly retain First Newton Bank, Covington, Georgia.

**B. Federal Reserve Bank of Minneapolis** (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

*1. Jon Allan Saxen*, Welcome, Minnesota; to acquire additional voting shares of Welcome Bancshares, Inc., Welcome, Minnesota, and thereby indirectly acquire Welcome State Bank, Welcome, Minnesota.

Board of Governors of the Federal Reserve System, October 30, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–29146 Filed 11–3–97; 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 November 28, 1997.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Horizon Bank of Florida Employee Stock Ownership Plan*, Pensacola, Florida; to become a bank holding company by acquiring 29.98 percent of the voting shares of Horizon Bancshares, Inc., Pensacola, Florida, and thereby indirectly acquire Horizon Bank of Florida, Pensacola, Florida.

**B. Federal Reserve Bank of Chicago** (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. Bank of Montreal*, Montreal, Ontario, Canada; Bankmont Financial Corp., New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Harris Trust Company of Florida, West Palm Beach, Florida.

*2. Wintrust Financial Corporation*, Lake Forest, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Crystal Lake Bank & Trust Company, National Association, Crystal Lake, Illinois.

**C. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. Tennessee Central Bancshares, Inc.*, Adamsville, Tennessee; to acquire 9.92 percent of the voting shares of Premier Bank of Brentwood, a *de novo bank*, Brentwood, Tennessee.

**D. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Commercial Guaranty Bancshares, Inc., and Commercial Guaranty Bancshares Acquisition Corp.*, both of Overland Park, Kansas; to acquire 100 percent of the voting shares of Humboldt Bancshares, Inc., Humboldt, Kansas, and thereby indirectly acquire Humboldt Bank, Humboldt, Kansas.

In connection with this application, Commercial Guaranty Bancshares Acquisition Corporation also has applied to become a bank holding company.

*2. Republic Bancshares, Inc.*, Natoma, Kansas; to become a bank holding company by acquiring 99.6 percent of the voting shares of United National Bank of Natoma, Natoma, Kansas.

Board of Governors of the Federal Reserve System, October 29, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–29083 Filed 11–3–97; 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 November 28, 1997.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Williams Partners, L.P.*, Atlanta, Georgia; to become a bank holding company by acquiring 79.27 percent of the voting shares of FNB Newton Bancshares, Inc., Covington, Georgia, and thereby indirectly acquire First Newton Bank, Covington, Georgia.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. BOR Bancshares, Inc.*, Rogers, Arkansas; to become a bank holding company by acquiring 100 percent of

the voting shares of Bank of Rogers, Rogers, Arkansas.

Board of Governors of the Federal Reserve System, October 30, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–29147 Filed 11–3–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Privacy Act of 1974; Systems of Records

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Technical amendment.

**SUMMARY:** The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending the Board's Privacy Act systems of records to show a change of address for Board offices. The Board relocated from 805 Fifteenth Street, NW., Washington, DC 20005 to its current address at 1250 H Street, NW., Washington, DC 20005 effective December 20, 1992. The address change was made to Board regulations in a November 7, 1994, publication of the **Federal Register** (59 FR 55331).

**EFFECTIVE DATE:** November 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Gray, Assistant General Counsel for Administration, (202) 942–1662. FAX (202) 942–1676.

**SUPPLEMENTARY INFORMATION:** Under the authority of 5 U.S.C. 8474 (1994), the Board hereby amends Systems of Records FRTIB–2, 3, 4, 6, 7, 8, 9, 10, and 11. The systems notice was originally published in the **Federal Register** at 52 FR 12065, April 14, 1987, and finalized at 55 FR 18949, May 7, 1990. The amendment to the systems of records to change the Board's address is set forth below.

**SYSTEMS OF RECORDS FRTIB–2, 3, 4, 6, 7, 8, 9, 10, AND 11 [AMENDED]:**

Remove the address ''805 Fifteenth Street'' and add in its place the address ''1250 H Street'' in the System Location and System Manager and Address sections for each of these systems of records.

Dated: October 29, 1997.

**Roger W. Mehle,**

*Executive Director.*

[FR Doc. 97–29099 Filed 11–3–97; 8:45 am]

BILLING CODE 6760–01–M

## FEDERAL TRADE COMMISSION

**[File No. 9723128]**

### Beylen Telecom, Ltd., Niteline Media, Inc., and Ron Tan; Analysis To Aid Public Comment and Agreement Containing Consent Order

**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 (which is also attached)—that would settle these allegations.

**DATES:** Comments must be received on or before January 5, 1998.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Eileen Harrington, Federal Trade Commission, H–238, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3127. Paul Luehr, Federal Trade Commission, H–238, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–2236.

**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 (which is also attached) 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, on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Ave., NW., Washington, DC 20580 either in person or by calling (202) 326–3627.

Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with 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, subject to final approval, an agreement containing a consent order from Beylen Telecom, Inc. (''Beylen''), NiteLine Media, Inc. (''NiteLine''), and Ron Tan (''Tan''). NiteLine and Tan have solicited consumers to download viewer software over the Internet in order to view computer images. Beylen has provided telecommunications and other services to NiteLine and other ''audiotext'' entities that use telephone calls to provide information to, and collect money from, consumers.

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 or make final the agreement's proposed order.

This matter concerns allegations about the manner in which respondents solicited and billed consumers to use a software program to view adult images on the Internet. The Commission has issued a proposed draft complaint that sets forth the allegations to be resolved by the proposed administrative consent order. The draft complaint closely parallels the Commission's federal court complaint and amended complaint filed in *FTC* v. *Audiotex Connection, Inc.* CV–97 0726 (DRH) (E.D.N.Y. filed Feb. 13, 1997) against defendants allegedly engaged in activities similar or related to those of the respondents. The proposed draft complaint challenges three practices of the respondents. First, the draft complaint alleges that respondents NiteLine and Tan misrepresented that consumers could view adult images at no cost if consumers downloaded and used the respondents' purported ''viewer'' software. Second, the draft complaint alleges that respondents NiteLine and Tan failed to disclose or adequately disclose material aspects of the ''viewer'' program, including that the program would shut off a consumer's modem speakers, cut off the consumer's modem connection to his local Internet service provider, and automatically place an international telephone call from the consumer's modem to a remote Internet site. The draft complaint alleges that Beylen violated the law by

providing the ''means and instrumentalities'' to carry out the two types of practices just described. Finally, the draft complaint alleges that respondents Beylen, NiteLine, and Tan caused consumers to receive deceptive telephone bills for calls that purportedly went to Moldova in Eastern Europe, when they actually only went to Canada.

The proposed administrative consent order, published for comment with this notice, again closely parallels the consent order proposed in *FTC* v. *Audiotex Connection, Inc.* CV–97 0726 (DRH) (E.D.N.Y.). The proposed administrative consent order contains prohibitions designed to prevent respondents from engaging in similar acts and practices in the future. The proposed administrative consent order also contains monetary provisions designed to redress injury to consumers.

Sections I and IIA of the proposed order prohibit respondents from engaging in the types of activity alleged in the draft complaint. Part IIB of the proposed order requires the respondents to obtain written or contractual assurances from third parties that calls will go to the destination for which charges are assessed on a consumer's telephone bill.

Section III requires the respondents to contribute to a redress fund established pursuant to the consent order proposed in *FTC* v. *Audiotex Connection, Inc.* CV–97 0726 (DRH) (E.D.N.Y.). Money from this fund is to be paid to long-distance carriers so that they can issue credits to consumers through their telephone bills. A portion of the redress fund also is be paid to the FTC so that the Commission or its agent can refund some consumers directly.

Sections IV, VI, and VIII require the respondents to maintain copies of business records related to using the Internet to place international long-distance telephone calls; to provide copies of the order to certain of the company's personnel; to notify the Commission of any change in employment or corporate structure that might affect compliance with the order; and to file compliance reports with the Commission. Section VII forbids the defendants from distributing any version of their ''viewer'' program to third parties.

The proposed administrative consent order does not contain a ''sunset'' provision that would terminate the order twenty years after it is issued or after a complaint is filed in federal court.

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.

**Beylen Telecom, Ltd. and Niteline Media, Inc., corporations, and Ron Tan, individually and as an officer of Niteline Media, Inc.**

## Agreement Containing Consent Order

The Federal Trade Commission has conducted an investigation of certain acts and practices of Beylen Telecom, Ltd., NiteLine Media, Inc., corporations, and Ron Tan, individually and as an officer of NiteLine Media, Inc. (''proposed respondents''). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing an order resolving the allegations contained in the attached draft complaint. Therefore,

It is hereby agreed by and between Beylen Telecom, Ltd. and NiteLine Media, Inc., by their duly authorized officers, and Ron Tan, individually and as an officer of NiteLine Media, Inc., and counsel for the Federal Trade Commission that:

1a. Proposed respondent Beylen Telecom, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the Cayman Islands with its principal office or place of business at Genesis Building, PS Box 2097, Grand Cayman, Cayman Islands, British West Indies.

1b. Proposed respondent NiteLine Media, Inc. is a New York corporation with its principal office or place of business at 7302 19th Avenue, Brooklyn, New York 11204.

1c. Proposed respondent Ron Tan is an individual residing within the State of New York and is an officer and shareholder of NiteLine Media, Inc. Individually or in concert with others he formulates, direct, or controls the policies, acts, or practices of NiteLine Media. His principal office or place of business is the same as that of NiteLine Media, Inc.

2. For the purpose of this Order, proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. The proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access To Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by any of the proposed respondents that the law has been violated as alleged in the draft complaint, or of any wrongdoing whatsoever, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order in disposition of the proceeding, and (2) make information about it public. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery of the complaint and the decision and Order to proposed respondents' attorneys as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or in the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the draft complaint and the following Order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the Order that occurs after it becomes final.

**Definitions**

For purposes of this Order, the following definitions shall apply:

1. ''Beylen'' means Beylen Telecom, Ltd. and its successors, assigns, shareholders, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting through any corporation, subsidiary, division, or other device.

2. ''NiteLine'' means NiteLine Media, Inc. and its successors, assigns, shareholders, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting through any corporation, subsidiary, division, or other device.

3. ''Ron Tan'' means Ron Tan a/k/a Roeun Tan, individually, and in his capacity as an officer and shareholder of NiteLine Media, Inc., and his successors, assigns, officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting through any corporation, subsidiary, division, or other device.

4. Unless otherwise specified, ''respondents'' shall mean Beylen and NiteLine, corporations, their successors and their officers; Ron Tan, individually and as an officer of NiteLine; and each of the above's agents, representatives and employees. Unless otherwise specified, ''respondent'' shall mean NiteLine, Ron Tan or Beylen.

5. ''Commerce'' shall mean ''commerce'' as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

6. ''Clearly and Conspicuously'' shall mean as follows:

In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. *Provided, however,* that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation. The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

7. ''Document'' is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained. A draft or non-identical copy is a separate document within the meaning of the term.

8. ''David.exe'' means a software program that, as alleged in the Commission's draft complaint, a respondent has promoted, offered, distributed, or provided on web sites as a ''viewer,'' which consumers may download, install, and execute, and which dials an international long-distance telephone number for which a fee is charged.

9. ''Eligible Consumer'' means a telephone subscriber that was billed for international long distance calls to Moldova from December, 1996 through February, 1997 to one of the telephone numbers listed in Schedule A, annexed hereto.

10. ''Relevant Charges'' means the dollar amount billed by AT&T, MCI, Sprint or another long distance carrier to an Eligible Consumer for international long distance calls to Moldova from December 1996 through February 1997, to one of the telephone numbers listed in Schedule A, annexed hereto.

*I.*

*It is therefore ordered* that, in connection with using the Internet to place international long distance telephone calls, each respondent shall not violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) by:

A. Representing, either directly or by implication, that consumers may download, install, activate or use a computer software program to view computer-stored images without cost, unless there are no costs to consumers arising from such activity.

B. Representing, either directly or by implication, that a consumer may view computer-stored images by downloading, installing and activating a software program known as ''David.exe'' or any other substantially similar software, unless such respondent clearly and conspicuously discloses, in close proximity to the representation, any material facts concerning costs and consequences to a consumer that result from downloading, installing, and activating such software, including, but not limited to, the following:

1. That the consumer's computer will terminate its modem connection to the consumer's usual Internet service provider;

2. That the consumer's modem will dial an international long-distance telephone number and establish a long-distance telephone connection with some remote location outside the United States;

3. (a) A statement that ''International long distance telephone charges to [*insert country of call termination*] apply''; and

(b) Either:

(i) a statement that ''This call may cost you as much as [*insert the maximum estimate of possible per-minute tariffed charge available through one of the three largest U.S. long-distance carriers (e.g. MCI, Sprint or AT&T; hereafter ''a major U.S. carrier'')*] per minute''; or

(ii) a stated range of possible costs-per-minute for the call, where the maximum possible per-minute charge available through a major U.S. carrier is disclosed at least as prominently as any lower estimate of possible charges, and the lower estimate is based on a non-promotional standard tariffed charge available through a major carrier, and there is a clear and conspicuous disclosure of the following statement: ''To determine your exact per-minute charges, contact your long distance carrier.''; and,

4. That, once connected, the consumer's computer modem will not terminate the international long-distance telephone connection to the remote service provider unless and until: (a) the consumer terminates the connection by using a ''disconnect'' feature that is displayed on the screen throughout the connection; OR (b) the call is terminated automatically after some specific, stated period of time (e.g. after 5 minutes); OR (c) the consumer turns off the power switch to his computer or modem, or takes other drastic and unusual action to terminate the telephone connection, if neither (a) nor (b) above are applicable.

*II.*

*It is further ordered* that:

A. Each respondent shall not violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) by directly causing international long-distance charges to appear on the telephone billing statement of any consumer when such call does not, in

fact, go to the international destination for which charges are assessed; and

B. Each respondent, when contracting with any entity for international call charges to appear on any consumer's telephone bill, shall include written terms in such contract requiring calls to go to the destination for which charges are assessed on a consumer's telephone bill. If, at the time of the entry of this Order, a respondent has an existing contract with another entity that arranges call charges to appear on any consumer's telephone bill, the respondent may satisfy the requirements of this Section by obtaining from that entity a letter or other written assurance that calls go to the destination for which charges are assessed on a consumer's telephone bill.

*III.*

*It is further ordered* that:

A. Pursuant to the Consent Decree and Order proposed in *FTC* v. *Audiotex Connection, Inc.*, CV–97 0726 (DRH) (EDNY) (''the Consent Decree''), and after the entry of such Consent Decree, Eligible Consumers charged by AT&T or MCI for telephone calls involving David.exe shall, to the extent possible, receive a credit on their monthly telephone bill equal to the amount of the Relevant Charges. To the extent an Eligible Consumer has already been credited such an amount in full, no additional credit shall be extended. To the extent an Eligible Consumer has received a partial credit, only the remaining balance of the original Relevant Charge shall be credited. The process for issuing the credits to Eligible Consumers will be administered by AT&T and MCI, respectively, and monitored and/or audited by the FTC. The reasonable costs of the two carriers arising from the issuance of credits for the Relevant Charges and from such administration of credits shall be reimbursed by the escrow agent by deducting and paying to AT&T and MCI, respectively, the amounts stated below.

B. Pursuant to the Consent Decree and Order proposed in *FTC* v. *Audiotex Connection, Inc.*, CV–97 0726 (DRH) (EDNY), and after the entry of such Consent Decree, a Redress Escrow Account shall be established at a bank with a branch located in the State of New York, and Joel Dichter, Esq., shall be designated as the sole escrow agent and signatory to this Redress Escrow Account. In addition to the funds deposited by the defendants in *FTC* v. *Audiotex Connection, Inc.*, the respondents shall deposit sufficient funds into the Redress Escrow Account as are necessary to enable the escrow agent to distribute the funds, consisting of a total deposit of all sums provided by Section IIIB(1) and (2), below, contemporaneously with a deposit of the $60,000 provided by Section IIIB(3), in the following manner:

1. AT&T shall be distributed the sum of $660,000 toward the cost of administering the credit to consumers provided by Section IIIA, above, and toward reimbursement of out-of-pocket expenses associated with calls to the Moldova telephone numbers;

2. MCI shall be distributed the sum of $99,302.57 toward the cost of administering the credit to consumers provided by Section IIIA above and toward reimbursement of out-of-pocket expenses associated with calls to the Moldova telephone numbers;

3. Forty Thousand Dollars ($40,000) shall be distributed to the Federal Trade Commission and shall be used, where practicable, to provide redress to Eligible Consumers charged by an international long-distance carrier other than AT&T or MCI (hereinafter referred to as ''Eligible Non-AT&T/MCI Consumers''). The Commission, in its sole discretion, may use a designated agent to administer redress for Eligible Non-AT&T/MCI Consumers. If the Commission, in its sole discretion, determines that redress to consumers is wholly or partially impractical, any funds up to Forty Thousand Dollars ($40,000.00) not so used shall be paid to the United States Treasury. The respondents shall be notified as to how such funds are disbursed, but shall have no right to contest the manner of distribution. Eligible Non-AT&T/MCI Consumers shall have 90 days from the Court's entry of the Consent Decree to request a refund. If the Commission or its designated agent determine within 120 days from the entry of the Consent Decree that the cost of issuing and administering refunds to Eligible Non-AT&T/MCI Consumers exceeds Forty Thousand Dollars ($40,000.00), the Commission or its designated agent shall so notify the escrow agent, and an additional sum of money not to exceed Twenty Thousand Dollars ($20,000.00) shall be distributed by the escrow agent to the Commission for redress to Eligible Non-AT&T/MCI Consumers. To the extent that the escrow agent is not notified in writing by the Commission within such 120 day period that all or a portion of the additional Twenty Thousand Dollars ($20,000.00) is required by the Commission for redress purposes, the $20,000.00 or remaining portion thereof not required by the Commission for redress purposes shall be released from the Redress Escrow Account and distributed promptly by the escrow agent to any contributing defendant in *FTC* v. *Audiotex Connection, Inc.* and/or any contributing respondent.

C. The respondents unilaterally agree to comply with this administrative Order after the Commission votes to accept it and during the 60-day comment period before the Order becomes final. Should the respondents distribute funds during that period to the Redress Escrow Account, in amounts sufficient to commence the redress program under the Consent Decree in *FTC* v. *Audiotex Connection, Inc.*, such payment shall fulfill the respondents' redress obligations under Section IIIB above.

*IV.*

*It is further ordered* that for a period of three years after the date of entry of this Order, each respondent shall maintain, and make available to the FTC upon reasonable notice, documents that, in reasonable detail, accurately, fairly, and completely reflect such respondent's activities related to using the Internet to place international long distance telephone calls including:

A. 1. Representative written and, if distributed in audio format, audiotaped copies of all solicitations, advertisements, or other marketing materials actually used;

2. The number, frequency, and average duration of calls to any international, tolled telephone numbers advertised or promoted directly or indirectly by such respondent, as well as the payments received and payments made for such calls;

3. The portion of the contract or the other written assurance referenced in Section IIB of this Order; and,

Records that reflect, for every consumer complaint or refund request received from any consumer to whom such respondent has sold, billed or sent any goods or services, or from whom such respondent accepted money for such goods or services, whether received directly or indirectly or through any third party:

1. the consumer's name, address, telephone number and the dollar amount paid by the consumer;

2. the written complaint or refund request, if any, and the date of the complaint or refund request;

3. the basis of the complaint and the nature and result of any investigation conducted concerning the validity of the complaint;

4. each response from the respondent(s) and the date of the response;

5. any final resolution and the date of the resolution; and

6. in the event of a denial of a refund request, the reason for such denial.

*V.*

*It is further ordered* that, to enable the Commission to monitor compliance with the provisions of this Order, for a period of three years after the date of entry of this Order:

A. Each corporate respondent shall notify the FTC in writing, within thirty (30) days of: (1) any reorganization, name change, dissolution, change in majority ownership, or any corporate change that may affect compliance obligations arising under this Order; and (2) any affiliation with any new business entity (including but not limited to, any partnership, limited partnership, joint venture, sole proprietorship or corporation) in connection with using the Internet to place international long distance telephone calls, such notification to include: (a) the name of the business entity; (b) the address and telephone number of the business entity; (c) the names of the business entity's officers, directors, principals and managers; and (d) a summary description of the business entity's intended activities; and

B. Each individual respondent shall notify the FTC in writing, within thirty (30) days of the discontinuance of his current business affiliation or employment with a corporate respondent, or of his affiliation or employment with any new business entity (including but not limited to, any partnership, limited partnership, joint venture, sole proprietorship or corporation) in connection with using the Internet to place international long distance telephone calls, in the latter case such notification to include: (a) the name of the business entity; (b) the address and telephone number of the business entity; (c) the names of the business entity's officers, directors, principals and managers; and (d) a summary description of the business entity's intended activities; and

C. Each respondent shall designate its counsel as authorized to accept service of all documents related to this Order.

*VI.*

*It is further ordered* that each respondent shall not provide or distribute to any person, except for a court, counsel for the respondents, counsel's consultants, agents of the Commission or other law enforcement authorities, or others as ordered by a court of competent jurisdiction, copies of ''David.exe'' or ''david7.exe'' or any substantially similar software.

*VII.*

*It is further ordered* that for a period of three years after the date of entry of this Order, each respondent shall in connection with any business using the Internet to place international long distance telephone calls:

A. Provide a copy of this Order once to, and obtain a signed and dated acknowledgment of receipt of the same from, each affiliate, subsidiary, division, sales entity, successor, officer, director, shareholder, employee, agent or representative of such respondent; and

B. Maintain, and upon reasonable notice make available to representatives of the Commission, the original and dated acknowledgments of the receipts of copies of this Order required by Section VIIA above.

*VIII.*

*It is further ordered* that where required by this Order, written notice to:

A. The Commission shall be effected by serving papers, by personal delivery or certified mail, addressed to: Associate Director, Federal Trade Commission, Division of Marketing Practices, Sixth Street and Pennsylvania Avenue, N.W., Room 238, Washington, DC 20580; and

B. The respondents shall be effected by serving papers, by personal delivery or certified mail, addressed to: Joel R. Dichter, Klein, Zelman, Rothermel & Dichter, L.L.P., 485 Madison Avenue, New York, NY 10022.

*IX.*

*It is further ordered* that each respondent shall, within 180 days after the date of entry to this Order, file with the Commission a report, in writing, setting forth the manner and form of compliance with this Order.

*X.*

*It is further ordered* that, to the extent that this Order may conflict with any federal law or regulation which is later enacted or amended, such law and not this Order shall apply where such a conflict exists. For the purposes of this Order, a conflict exists if the conduct prohibited by this Order is required by such federal law or if conduct required by this Order is prohibited by such federal law.

**Attachment A—List of Moldova Phone Numbers**

373–955–1100
373–955–1111
373–955–1200
373–955–1300
373–955–1400
373–955–1500
373–955–1600
373–955–2000
373–955–2010
373–955–2020
373–955–2030
373–955–2222
373–955–2400
373–955–2401
373–955–2402
373–955–2403
373–955–2404
373–955–2405
373–955–2406
373–955–2407
373–955–2408
373–955–2409
373–955–2410
373–955–2411
373–955–2419

**Donald S. Clark,**

*Secretary.*

[FR Doc. 97–29298 Filed 11–3–97; 8:45 am]

BILLING CODE 6750–01–P

## GENERAL SERVICES ADMINISTRATION

### Proposed Collection Application/ Permit for Use of Space in Public Buildings and Grounds

**AGENCY:** Office of Equal Employment Opportunity, GSA.

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0044).

**SUMMARY:** The GSA hereby gives notice under the Paperwork Reduction Act of 1995 that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0044, ''Application/Permit for Use of Space in Public Buildings and Grounds.'' This GSA Form is used by the general public to request the use of public space in Federal buildings for cultural, recreational or educational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany the request.

**DATES:** January 5, 1998.

**ADDRESSES:** Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 18th & F Streets, NW, Washington, DC 20405.

**ANNUAL REPORTING BURDEN:** *Respondents:* 8000; *annual responses:* 1; *average hours per response:* 0.05; *burden hours:* 666.

**FOR FURTHER INFORMATION CONTACT:** Charlene Heeter, Public Building Service (202) 208–0214.

**COPY OF PROPOSAL:** A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP),

Room 4011, GSA Building, 18th and F Streets NW, Washington, DC 20405, or by telephone (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: October 28, 1997.

**Ida M. Ustad,**

*Deputy Associate Administrator, Office of Acquisition Policy.*

[FR Doc. 97–29055 Filed 11–3–97; 8:45 am]

BILLING CODE 6820–61–M

## GENERAL SERVICES ADMINISTRATION

### Proposed Collection; Comment Request Entitled Nondiscrimination in Federal Financial Assistance Programs

**AGENCY:** Office of Equal Employment Opportunity, GSA.

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0228).

**SUMMARY:** The GSA hereby gives notice under the Paperwork Reduction Act of 1995 that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0228, ''Nondiscrimination in Federal Financial Assistance Programs.'' This information is needed to ensure that recipients of Federal financial assistance distribute Federal surplus property in a nondiscriminatory manner.

**DATES:** Comment Due Date: January 5, 1998.

**ADDRESSES:** Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 18th & F Streets, NW, Washington, DC 20405.

**ANNUAL REPORTING BURDEN:**

Respondents: 55; annual responses: 1; average hours per response: 16; burden hours: 16,200.

**FOR FURTHER INFORMATION CONTACT:** William Conley, Office of Equal Employment Opportunity, (202) 501–0767.

**COPY OF PROPOSAL:** A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 18th & F Streets NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: October 28, 1998.

**Ida M. Ustad,**

*Deputy Associate Administrator, Office of Acquisition Policy.*

[FR Doc. 97–29057 Filed 11–3–97; 8:45 am]

BILLING CODE 6820–61–M

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0007]**

### Proposed Collection; Comment Request Entitled Contractor's Qualifications and Financial Information

**AGENCY:** Office of Chief Financial Officer (B), GSA.

**ACTION:** Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0007).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Contractor's Qualifications and Financial Information. A request for public comments was published at 62 FR 43332 on August 13, 1997. No comments were received.

**DATES:** *Comment Due Date:* December 4, 1997.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Ronald Smeltzer, (202) 501–1676.

**SUPPLEMENTARY INFORMATION:** .

**A. Purpose**

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0007, Contractor's Qualifications and Financial Information. This form is used to determine the financial capability of prospective contractors as to whether they meet the financial responsibility standards in accordance with the Federal Acquisition Regulation (FAR) and the General Services Administration Acquisition Regulation (GSAR).

**B. Annual Reporting Burden**

*Respondents:* 5,822; *annual responses:* 6,986; *average hours per response:* 2.5; *burden hours:* 17,465.

**Copy of Proposal**

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: October 28, 1997.

**Ida M. Ustad,**

*Deputy Associate Administrator, Office of Acquisition Policy.*

[FR Doc. 97–29058 Filed 11–3–97; 8:45 am]

BILLING CODE 6820–61–M

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0262]**

### Proposed Collection; Comment Request Entitled Identification of Products With Environmental Attributes

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0262).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Identification of Products with Environmental Attributes. A request for public comments was published at 62 FR 4427, August 20, 1997. No comments were received.

**DATES:** *Comments Due Date:* December 4, 1997.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection 3090–

0262, concerning Identification of Products with Environmental Attributes. This information collection will be used to assist Federal agencies in deciding whether such products will meet their needs and consistent with Federal acquisition law will order such products in preference to other products that may meet their needs, but do not have environmental benefits.

**B. Annual Reporting Burden**

*Respondents:* 3,200; *annual responses:* 3,200; *average hours per response:* .5; *burden hours:* 16,000.

**Copy of Proposal**

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: October 28, 1997.

**Ida M. Ustad,**

*Deputy Associate Administrator, Office of Acquisition Policy.*

[FR Doc. 97–29059 Filed 11–3–97; 8:45 am]

**BILLING CODE 6820–61–M**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–0023]**

### Proposed Collection; Comment Request Entitled Surplus Personal Property Mailing List Application

**AGENCY:** Property Management Division (FBP), GSA.

**ACTION:** Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0023).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Surplus Personal Property Mailing List. A request for public comments was published at 62 FR 43332, August 13, 1997. No comments were received.

**DATES:** *Comment Due Date:* December 4, 1997.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Lynne Price, (703) 308–0643.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0023, concerning Surplus Personal Property Mailing List. The GSA Form 2170 is completed by persons who wish to have their names placed on the Surplus Personal Property Mailing List maintained by GSA Regional Sales Offices. Mailing labels are produced based on the type of property and geographical area indicated by the prospective bidder on the mailing list application.

**B. Annual Reporting Burden**

*Respondents:* 35,000; *annual responses:* 35,000; *average hours per response:* .083; *burden hours:* 2905.

**Copy of Proposals**

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: October 28, 1997.

**Ida M. Ustad,**

*Deputy Associate Administrator, Office of Acquisition Policy.*

[FR Doc. 97–29060 Filed 11–3–97; 8:45 am]

**BILLING CODE 6820–61–M**

## GENERAL SERVICES ADMINISTRATION

### Interagency Committee for Medical Records (ICMR) Cancellation of Medical Standard Form and Establishment of a New Medical Form

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** Standard Form 517, Clinical Record—Anesthesia is cancelled. This form will now be Optional Form 517. Each anesthesia unit collects information diferrently; so a single standard form will not meet their needs. Therefore, this form is being changed to an optional form giving the agencies leaway to collect this data as they see fit.

The new optional form reflects a major revision of the SF 517. The new Optional Form 517 collects in greater detail the administration of anesthesia.

The OF 517 will be authorized for local reproduction. You can request a camera copy of SF 517 from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501–0581.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Williams, GSA (202) 501–0581.

**DATES:** Effective November 4, 1997.

Dated: October 27, 1997.

**Barbara M. Williams,**

*Deputy Standard and Optional Forms Management Officer.*

[FR Doc. 97–29056 Filed 11–3–97; 8:45 am]

**BILLING CODE 6820–34–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA–9044]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Provider Reimbursement Manual, Part 1—Chapter 27, Section 2721, 2722 and 2725, Request for Exception to ESRD Composite Rates and Supporting Regulations in 42 CFR 413.170; *Form No.:* HCFA–9044 (OMB #0938–0296); *Use:* Sections 2721, 2722 and 2525 of the Provider Reimbursement Manual describe the information ESRD facilities

must submit in justifying an exception request to their composite rate for outpatient dialysis services.; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions and Federal Government; *Number of Respondents:* 275; *Total Annual Responses:* 275; *Total Annual Hours:* 13,200.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 28, 1997.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.*

[FR Doc. 97–29143 Filed 11–3–97; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[OACT–055–N]**

**RIN 0938–AI03**

## Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 1998

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice.

**SUMMARY:** As required by section 1839 of the Social Security Act, this notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 1998. It also announces the monthly SMI premium rate to be paid by all enrollees during 1998. The monthly actuarial rates for 1998 are $87.90 for aged enrollees and $97.10 for disabled enrollees. The monthly SMI premium rate for 1998 is $43.80.

**EFFECTIVE DATE:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Carter S. Warfield, (410) 786–6396.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (HI) (Medicare Part A). The SMI program is available to individuals who are entitled to HI and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal government.

The Secretary of Health and Human Services is required by section 1839 of the Social Security Act (the Act) to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the year beginning the following January. These amounts are called ''monthly actuarial rates.''

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the year beginning the following January. (Although the costs to the program per disabled enrollee are different than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Public Law 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Public Law 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Public Law 98–21), section 2302 of the Deficit Reduction Act of 1984 (DRA 1984) (Public Law 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 1985) (Public Law 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) (Public Law 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) (Public Law 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) (Public Law 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Public Law 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA 1997) (Public Law 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

BBA 1997 included a further provision affecting the calculation of the SMI actuarial rates and premiums for 1998 though 2003. Section 4611 of BBA 1997 modified the home health benefit payable under the HI program for individuals enrolled in the SMI program. In doing so, expenditures for home health services not considered ''post-institutional'' will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) of BBA 1997 requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI

program. Section 4611(e)(2) also provides a specific yearly proportion for the transferred funds. The proportions are 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For purposes of determining the correct amount of financing from general revenues of the federal government, it is necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred. Accordingly, the actuarial rates shown in this announcement reflect the net transitional cost only.

Section 4611(e)(3) of BBA 1997 also specifies, for the purposes of determining the premium, that the monthly actuarial rate for aged enrollees shall be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost would transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium is 7 years while the transition period for including these services in the actuarial rate is 6 years. As a result, the premium rate for this year and each of the next 5 years, through 2003, will be less than 50 percent of the actuarial rate for aged enrollees announced by the Secretary.

New section 1933(c)(2) of the Act, as added by section 4732(c) of BBA 1997, requires the Secretary to allocate money from the SMI trust fund to the state Medicaid programs for the purpose of paying the SMI premiums from 1998 through 2002 for the section 1933 low-income Medicaid beneficiaries. This allocation, while not a benefit expenditure, will be an expenditure of the trust fund and has been included in calculating the SMI actuarial rates for this year. The allocation will be included in calculating the SMI actuarial rates through 2002.

As determined according to section 1839(a)(3) of the Act and section 4611(e)(3) of BBA 1997, the premium rate for 1998 is $43.80.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Public Law 101–234) did not repeal the revisions to section 1839(f) made by Public Law 100–360.) Section 1839(f) provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premiums deducted from these benefit payments, the premium increase will be reduced to avoid causing a decrease in the individual's net monthly payment. This occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits. (A check for benefits under section 202 or 223 is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has the December's SMI premium deducted from it.) (This change, in effect, perpetuates former amendments that prohibited SMI premium increases from reducing an individual's benefits in years in which the dollar amount of the individual's cost-of-living increase in benefits was not at least as great as the dollar amount of the individual's SMI premium increase.)

Generally, if a beneficiary qualifies for this protection (that is, the beneficiary must have been in current payment status for November and December of the previous year), the reduced premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits under section 202 or 223 of the Act is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December; or

(2) The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in the SMI program late or have enrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. That increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) are made.

## II. Notice of Monthly Actuarial Rates and Monthly Premium Rate

The monthly actuarial rates applicable for 1998 are $87.90 for enrollees age 65 and over, and $97.10 for disabled enrollees under age 65. Section III of this notice gives the actuarial assumptions and bases from which these rates are derived. The monthly premium rate will be $43.80 during 1998.

## III. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 1998

### *A. Actuarial Status of the Supplementary Medical Insurance Trust Fund*

Under the law, the starting point for determining the monthly premium is the amount that would be necessary to finance the SMI program on an incurred basis; that is, the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing has been established, but effective for the period for which the financing has been set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs (in addition to the amount of incurred but unpaid expenses). An appropriate level for assets to cover a moderate degree of variation between actual and projected costs depends on numerous factors. The most important of these factors are: (1)

The difference from prior years between the actual performance of the program and estimates made at the time financing was established, and (2) the expected relationship between incurred and cash expenditures. Ongoing analysis is made of both factors as the trends vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 1996 and 1997.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

[In billions of dollars]

| Financing period ending | Assets | Liabilities | Assets less liabilities |
|---|---|---|---|
| Dec. 31, 1996 | $28.332 | $1.350 | $26.982 |
| Dec. 31, 1997 | 37.502 | 1.397 | 36.105 |

*B. Monthly Actuarial Rate for Enrollees Age 65 and Older*

The monthly actuarial rate for enrollees age 65 and older is one-half of the monthly projected cost of benefits, the Medicaid transfer (for 1998 through 2002), and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to amortize any surplus or unfunded liabilities. As noted in section I. of this announcement, section 4611(e)(2) of BBA 1997 requires that only 1/6 of the cost of the home health services being transferred be included in the actuarial rate for 1998, rather than the full cost of such benefits.

The monthly actuarial rate for enrollees age 65 and older for 1998 was determined by first establishing per-enrollee cost by type of service from program data through 1995 and then projecting these costs for subsequent years. Although the actuarial rates are now applicable for calendar years, projections of per-enrollee costs were determined on a July to June period, consistent with the July annual fee screen update used for benefits before the passage of section 2306(b) of DRA 1984. Accordingly, the values for the 12-month period ending June 30, 1995 were established from program data, and subsequent periods were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 2. Those per-enrollee values are then adjusted to apply to a calendar year period. The projected values for financing periods from January 1, 1995, through December 31, 1998, are shown in Table 3.

The projected monthly rate required to pay for one-half of the total of benefits, the transfer to Medicaid, and administrative costs for enrollees age 65 and over for 1998 is $106.46. Included in the total of $106.46 is $15.44 for home health services. The amount of $15.44 includes (i) the full cost of the home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply ($14.99) as well as (ii) the cost of furnishing all home health services to those individuals enrolled in SMI only ($0.45). Since section 4611(e)(2) of BBA 1997 requires that only 1/6 of the cost for those services being transferred be included in the actuarial rate for 1998, the monthly actuarial rate provides for an adjustment of −$12.49, representing 5/6 of the full cost of such services. The monthly actuarial rate of $87.90 also provides an adjustment of −$4.13 for interest earnings and −$1.94 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a negative contingency margin is needed to reduce assets to a more appropriate level.

*C. Monthly Actuarial Rate for Disabled Enrollees*

Disabled enrollees are those persons enrolled in SMI because of entitlement (before age 65) to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to the projection for the aged, using appropriate actuarial assumptions (see Table 2). Costs for the end-stage renal disease program are projected differently because of the different nature of services offered by the program. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits, the transfer to Medicaid, and administrative costs for disabled enrollees for 1998 is $116.64. Included in the total of $116.64 is $16.98 for home health services. The amount of $16.98 is the full cost of the home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply. Since section 4611(e)(2) of BBA 1997 requires that only 1/6 of the cost for those services being transferred be included in the actuarial rate for 1998, the monthly actuarial rate provides for an adjustment of −$14.17, representing 5/6 of the full cost of such services. The monthly actuarial rate of $97.10 also provides an adjustment of −$2.27 for interest earnings and −$3.10 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a negative contingency margin is needed to reduce assets to a more appropriate level.

*D. Sensitivity Testing*

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it is appropriate to test the adequacy of the rates announced here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician residual (as defined in Table 2), and increases in physician fees as governed by the program's physician fee schedule. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is, therefore, more pessimistic than the current version. The values for the alternative assumptions were determined by studying the average historical variation between actual and projected increases in the respective

increase factors. All assumptions not shown in Table 5 are the same as in Table 2.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates would result in an excess of assets over liabilities of $32.371 billion by the end of December 1998. This amounts to 31.3 percent of the estimated total incurred expenditures for the following year. Assumptions that are somewhat more pessimistic (and, therefore, test the adequacy of the assets to accommodate projection errors) produce a surplus of $22.836 billion by the end of December 1998, which amounts to 20.6 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $41.762 billion by the end of December 1998, which amounts to 43.2 percent of the estimated total incurred expenditures for the following year.

*E. Premium Rate*

As determined by section 1839(a)(3) of the Act and section 4611(e)(3) of BBA 1997, the monthly premium rate for 1998, for both aged and disabled enrollees, is $43.80.

TABLE 2.—PROJECTION FACTORS [1] 12-MONTH PERIODS ENDING JUNE 30 OF 1995–1999

[In Percent]

| 12-month period ending June 30 | Physicians' services | | Outpatient hospital services | Home health agency services [4] | Group practice prepayment plans | Independent lab services |
|---|---|---|---|---|---|---|
| | Fees [2] | Residual [3] | | | | |
| Aged: | | | | | | |
| 1995 | 5.7 | 2.0 | 17.7 | 91.0 | 17.4 | 1.2 |
| 1996 | 2.2 | −1.6 | 3.3 | 30.6 | 24.2 | −3.6 |
| 1997 | 0.5 | 2.2 | 3.2 | 15.3 | 22.1 | −0.9 |
| 1998 | 1.7 | 2.4 | 4.7 | ([5]) | 33.9 | 7.1 |
| 1999 | 0.4 | 1.9 | 8.2 | [5] 88.2 | 36.8 | 5.7 |
| Disabled: | | | | | | |
| 1995 | 5.7 | 6.6 | 2.7 | 0.0 | 15.0 | 10.7 |
| 1996 | 2.2 | −3.2 | 0.0 | 0.0 | 14.4 | 2.7 |
| 1997 | 0.5 | 1.1 | 4.3 | 0.0 | 15.9 | 1.9 |
| 1998 | 1.7 | 0.6 | 1.2 | ([5]) | 34.8 | 8.7 |
| 1999 | 0.4 | −1.0 | 8.3 | [5] 97.1 | 37.5 | 6.2 |

[1] All values are per enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] From July 1, 1981 to December 31, 1997, home health agency services have been provided by the SMI program only for those SMI enrollees not entitled to HI. Otherwise these services were provided by the HI program. Since all SMI disabled enrollees are entitled to HI, their coverage of these services has been provided by the HI program during this period.
[5] Effective January 1, 1998, the coverage of home health agency services not considered ''post-institutional'' for those individuals entitled to HI and enrolled in SMI will be transferred from the HI program to the SMI program. As a result, as of January 1, 1998, there will be a large increase in SMI expenditures for these services for the aged enrollees, and SMI coverage for these services will resume for disabled enrollees.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 1995 THROUGH DECEMBER 31, 1998

| | Financing periods | | | |
|---|---|---|---|---|
| | CY 1995 | CY 1996 | CY 1997 | CY 1998 |
| Covered services (at level recognized): | | | | |
| Physicians' reasonable charges | $58.88 | $59.82 | $61.82 | $63.55 |
| Outpatient hospital and other institutions | 21.26 | 21.95 | 22.85 | 24.06 |
| Home health agencies | 0.33 | 0.40 | 0.43 | 15.44 [1] |
| Group practice prepayment plans | 11.55 | 14.21 | 18.29 | 23.76 |
| Independent lab | 2.44 | 2.38 | 2.46 | 2.51 |
| Total services | 94.46 | 98.76 | 105.85 | 129.32 |
| Cost-sharing: | | | | |
| Deductible | −3.71 | −3.73 | −3.74 | −3.75 |
| Coinsurance | −17.36 | −18.24 | −19.62 | −21.61 |
| Total benefits | 73.39 | 76.79 | 82.49 | 103.96 |
| Transfer to Medicaid | 0.00 | 0.00 | 0.00 | 0.30 [2] |
| Administrative expenses | 1.86 | 2.05 | 2.11 | 2.20 |
| Incurred expenditures | 75.25 | 78.84 | 84.60 | 106.46 |
| Value of interest | −2.04 | −2.40 | −3.94 | −4.13 |
| Adjustment for home health agency services transferred from HI | 0.00 | 0.00 | 0.00 | −12.49 [3] |
| Contingency margin for projection error and to amortize the surplus or deficit | −0.11 | 8.46 | 6.94 | −1.94 |
| Monthly actuarial rate | 73.10 | 84.90 | 87.60 | 87.90 |

[1] This amount includes the full cost of the home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply, as well as the cost of furnishing all home health services to those individuals enrolled in SMI only.

[2] Section 1933(c)(2) of the Act, as added by section 4732(c) of BBA 1997, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low-income beneficiaries. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.

[3] Section 4611 of BBA 1997 specifies that expenditures for home health services not considered ''post-institutional'' will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998 the amount transferred is 1/6 of the full cost for such services. Therefore, the adjustment for 1998 represents 5/6 of the full cost. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 1995 THROUGH DECEMBER 31, 1998

| | Financing periods | | | |
|---|---|---|---|---|
| | CY 1995 | CY 1996 | CY 1997 | CY 1998 |
| Covered services (at level recognized): | | | | |
| Physicians' reasonable charges | $64.43 | $65.21 | $67.08 | [1] $67.96 |
| Outpatient hospital and other institutions | 42.61 | 43.89 | 45.45 | 47.26 |
| Home health agencies | 0.00 | 0.00 | 0.00 | 16.98 |
| Group practice prepayment plans | 2.70 | 3.10 | 3.92 | 5.31 |
| Independent lab | 3.00 | 3.09 | 3.27 | 3.44 |
| Total services | 112.74 | 115.29 | 119.72 | 140.95 |
| Cost-sharing: | | | | |
| Deductible | −3.55 | −3.57 | −3.58 | −3.60 |
| Coinsurance | −21.17 | −21.69 | −22.50 | −23.40 |
| Total benefits | 88.02 | 90.03 | 93.64 | 113.95 |
| Transfer to Medicaid | 0.00 | 0.00 | 0.00 | [2] 0.29 |
| Administrative expenses | 2.23 | 2.40 | 2.41 | 2.40 |
| Incurred expenditures | 90.25 | 92.43 | 96.05 | 116.64 |
| Value of interest | −0.31 | −0.29 | −1.84 | −2.27 |
| Adjustment for home health agency services transferred from HI | 0.00 | 0.00 | 0.00 | [3] −14.17 |
| Contingency margin for projection error and to amortize the surplus or deficit | 15.86 | 12.96 | 16.19 | −3.10 |
| Monthly actuarial rate | 105.80 | 105.10 | 110.40 | 97.10 |

[1] This amount includes the full cost of the home health services being transferred from the HI program as a result of BBA 1997 as if the transition did not apply.

[2] Section 1933(c)(2) of the Act, as added by section 4732(c) of BBA 1997, allocates an amount to be transferred from the SMI trust fund to the state Medicaid programs. This transfer is for the purpose of paying the SMI premiums for certain low'income beneficiaries. It is not a benefit expenditure but is used in determining the SMI actuarial rates since it is an expenditure of the trust fund.

[3] Section 4611 of BBA 1997 specifies that expenditures for home health services not considered ''post-institutional'' will be payable under the SMI program rather than the HI program beginning in 1998. However, section 4611(e)(1) requires there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from the HI program to the SMI program. For 1998 the amount transferred is 1/6 of the full cost for such services. Therefore, the adjustment for 1998 represents 5/6 of the full cost. This amount adjusts the actuarial rate to reflect the correct amount attributable to home health services.

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 1998

| Projection | This projection | | | Low cost projection | | | High cost | | |
|---|---|---|---|---|---|---|---|---|---|
| | 12-month period ending June 30 | | | 12-month period ending June 30 | | | 12-month period ending June 30 | | |
| | 1997 | 1998 | 1999 | 1997 | 1998 | 1999 | 1997 | 1998 | 1999 |
| Projection factors (in percent): | | | | | | | | | |
| Physician fees [1] | | | | | | | | | |
| Aged | 0.5 | 1.7 | 0.4 | 0.2 | 0.5 | −1.4 | 0.8 | 2.9 | 2.2 |
| Disabled | 0.5 | 1.7 | 0.4 | 0.2 | 0.5 | −1.4 | 0.8 | 2.9 | 2.2 |
| Utilization of physician services [2] | | | | | | | | | |
| Aged | 2.2 | 2.4 | 1.9 | 0.4 | 0.2 | −0.5 | 4.0 | 4.6 | 4.4 |
| Disabled | 1.1 | 0.6 | −1.0 | −1.8 | −2.4 | −4.0 | 4.0 | 3.6 | 2.1 |
| Outpatient hospital services per enrollee | | | | | | | | | |
| Aged | 3.2 | 4.7 | 8.2 | −1.2 | 0.1 | 3.3 | 7.6 | 9.3 | 13.2 |
| Disabled | 4.3 | 1.2 | 8.3 | −1.0 | −4.4 | 2.7 | 9.6 | 6.7 | 14.0 |
| | As of December 31 | | | As of December 31 | | | As of December 31 | | |
| | 1996 | 1997 | 1998 | 1996 | 1997 | 1998 | 1996 | 1997 | 1998 |
| Actuarial status (in billions): | | | | | | | | | |
| Assets | $28.332 | $37.502 | $34.274 | $28.332 | $40.265 | $42.540 | $28.332 | $34.753 | $25.756 |
| Liabilities | 1.350 | 1.397 | 1.903 | .441 | .399 | .778 | 2.134 | 2.275 | 2.920 |
| Assets less liabilities | $26.982 | $36.105 | $32.371 | $27.891 | $39.866 | $41.762 | $26.198 | $32.478 | $22.836 |

| | As of December 31 | | | As of December 31 | | | As of December 31 | | |
|---|---|---|---|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1996 | 1997 | 1998 | 1996 | 1997 | 1998 |
| Ratio of assets less liabilities to expenditures (in percent)[3] ..... | 35.8 | 38.0 | 31.3 | 38.4 | 44.5 | 43.2 | 33.5 | 32.3 | 20.6 |

[1] As recognized for payment under the program.
[2] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[3] Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

## IV. Waiver of Notice of Proposed Rulemaking

The Medicare statute, as discussed previously, requires publication of the monthly actuarial rates and the Part B premium amount in September. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than formal notice and comment rulemaking procedures, to make such announcements. In doing so, we acknowledge that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formula used to calculate the SMI premium is statutorily directed, and we can exercise no discretion in following that formula. Moreover, the statute establishes the time period for which the premium rates will apply, and delaying publication of the SMI premium rate would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1839 of the Social Security Act; 42 U.S.C. 1395r)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: October 13, 1997.

**Nancy-Ann Min DeParle,**

*Deputy Administrator, Health Care Financing Administration.*

Dated: October 21, 1997.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 97–29031 Filed 11–3–97; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for Actions to be Taken Under the NIH Guidelines for Research Involving Recombinant DNA Molecules

Notice is hereby given of the availability of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for public review. The EA is for actions to be taken under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782). Under the actions, the National Institutes of Health (NIH) will relinquish its approval of individual human gene transfer protocols to the Food and Drug Administration, which has statutory authority for such approvals. Instead, the NIH will emphasize its role as the focal point for policy discussion and review of scientific, safety, social, and ethical issues arising from human gene transfer research. The EA finds that these actions will not significantly affect the quality of the human environment.

Copies of the EA and FONSI can be viewed in the NIH Environmental Reading Room, Building 31, Room 2B04, 9000 Rockville Pike, Bethesda, MD 20892. Additional copies of the EA and FONSI are available for viewing in the NIH Office of Recombinant DNA Activities (ORDA), 6000 Executive Boulevard, Suite 302, Bethesda, MD 20892–7010.

For further information, contact Debra Knorr, Deputy Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839.

Dated: October 26, 1997.

**Lana Skirboll,**

*Associate Director for Science Policy, National Institutes of Health.*

[FR Doc. 97–29072 Filed 11–3–97; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye 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 Eye Institute Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Clinical Research.
*Date:* November 24, 1997.
*Time:* 8:30 a.m.
*Place:* National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., Bethesda, MD 20892–7164.
*Contact Person:* Andrew P. Mariani, Ph.D., Executive Plaza South, Room 350, 6120 Executive Blvd., Bethesda, MD 20892–7164, (303) 496–5561.
*Purpose/Agenda:* Review of Grant Applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research: National Institutes of Health)

Dated: October 28, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29076 Filed 11–3–97; 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 Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Heart, Lung, and Blood Institute at 8:00 a.m. on December 11–12, 1997, National Institutes of Health, 9000 Rockville

Pike, Building 10, Room 7C101, Bethesda, Maryland 20892.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting will be closed to the public for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, (301) 496–2116, will furnish substantive program information.

Dated: October 28, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29074 Filed 11–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

*Date:* November 10, 1997.

*Time:* 1:00 pm to adjournment.

*Place:* 6120 Executive Blvd., Rockville MD 20892 (telephone conference call).

*Contact Person:* Craig A. Jordan, Ph.D., Acting Director, NIDCD/DEA/SRB, EPS ROOM 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8693.

*Purpose/Agenda:* To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications, and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: October 28, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29073 Filed 11–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; 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 Center for Scientific Review Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Biological and Physiological Sciences.

*Date:* November 21, 1997.

*Time:* 2:00 p.m.

*Place:* NIH, Rockledge 2, Room 6154, Telephone Conference.

*Contact Person:* Dr. David Remondini, Scientific Review, Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892, (301) 435–1038.

*Name of SEP:* Biological and Physiological Sciences.

*Date:* November 24, 1997.

*Time:* 1:00 p.m.

*Place:* NIH, Rockledge 2, Room 4202, Telephone Conference.

*Contact Person:* Dr. Eugene Zimmerman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1220.

*Name of SEP:* Chemistry and Related Sciences.

*Date:* November 25, 1997.

*Time:* 1:00 p.m.

*Place:* NIH, Rockledge 2, Room 4151, Telephone Conference.

*Contact Person:* Dr. Gopa Rakhit, Scientific Review Administrator, 6701 Rockledge Drive, Room 4154, Bethesda, Maryland 20892, (301) 435–1721.

*Name of SEP:* Microbiological and Immunological Sciences.

*Date:* December 4, 1997.

*Time:* 9:55 a.m.

*Place:* NIH, Rockledge 2, Room 5106, Telephone Conference.

*Contact Person:* Dr. Sami Mayyasi, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1216.

*Purpose/Agenda:* To review Small Business Innovation Research.

*Name of SEP:* Biological and Physiological Sciences.

*Date:* November 20–21, 1997.

*Time:* 9:00 a.m.

*Place:* One Washington Circle, Washington, DC.

*Contact Person:* Dr. Anita Miller Sostek, Scientific Review Administrator, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

*Name of SEP:* Chemistry and Related Sciences.

*Date:* December 3–4, 1997.

*Time:* 5:00 p.m.

*Place:* Doubletree Hotel, Rockville, MD.

*Contact Person:* Dr. Donald Schneider, Scientific Review Administrator, 6701 Rockledge Drive, Room 4172, Bethesda, Maryland 20892, (301) 435–1727.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: October 28, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29075 Filed 11–3–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–50]**

### Submission for OMB Review: Comment Request

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: December 4, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Office, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepared the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 29, 1997.

**David S. Cristy,**

*Director, Information Resources, Management Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Contractor's Requisition Project Mortgages.

*Office:* Housing.

*OMB Approval Number:* 2502–0028.

*Description of the Need for the Information and Its Proposed Use:* Form HUD–92448 is used by the contractor to obtain distribution of insured mortgage proceeds when construction costs are involved. The form is needed by HUD to monitor construction progress and ensure compliance with the Davis-Bacon wage rates.

*Form Number:* HUD–92448.

*Respondents:* Business or Other For-Profit.

*Frequency of Submission:* On Occasion and Recordkeeping.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–92448 | 1,000 | | 10 | | 6 | | 60,000 |

*Total Estimated Burden Hours:* 60,000.

*Status:* Extension, without changes.

*Contact:* Roger M. Kramer, HUD, (202) 708–0624 ×2569; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 29, 1997.

[FR Doc. 97–29100 Filed 11–3–97; 8:45 am]

**BILLING CODE 4210–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–51]**

### Submission for OMB Review: Comment Request

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comment due date: December 4, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 461 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained form Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 29, 1997.

**David S. Cristy,**

*Director, Information Resources, Management Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Campus of Learners Semi-Annual Report.

*Office:* Public and Indian Housing.

*OMB Approval Number:* None.

*Description of the Need for the Information and Its Proposed Use:* To appropriately monitor the Campus of Learners program and to ensure that Federal monies are spent accordingly, HUD needs this information on the number of families include in the program, the budget supporting the program, the number of residents in classes and training, and other

opportunities made available to residents under this program.

*Form Number:* HUD–52350.

*Respondents:* State, Local, or Tribal Government.

*Frequency of Submission:* Semi-annually.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–52350 | 25 | | 2 | | 36 | | 1,800 |

*Total Estimated Burden Hours:* 1,800.

*Status:* New.

*Contact:* Beverly Hardy, HUD, (202) 708–4214 x4254; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 29, 1997.

[FR Doc. 97–29102 Filed 11–3–97; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4032–N–05]**

### Submission for OMB Review: Comment Request

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: December 4, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 29, 1997.

**David S. Cristy,**

*Director, Information Resources, Management Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Loss Mitigation Evaluation.

*Office:* Housing.

*OMB Approval Number:* None.

*Description of the Need for the Information and Its Proposed Use:* The new section 24 CFR 203.605, ''Loss Mitigation Evaluation,'' requires mortgagees to perform an evaluation of each defaulting mortgagor's circumstances to determine which if any of the available loss mitigation techniques are appropriate in order to assist the mortgagor. This information is needed to ascertain whether adequate and prudent loan servicing was performed by the mortgagee. The information the lender submitted for a claim for FHA insurance benefits will be subject to post claim review under the Department's lender monitoring activities.

*Form Number:* None.

*Respondents:* Business or other for-profit.

*Frequency of Submission:* Annually and recordkeeping.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Evaluation | 650,000 | | 1 | | .25 | | 156,250 |

*Total Estimated Burden Hours:* 156,250.

*Status:* New.

*Contact:* Leslie Bromer, HUD, (202) 708–1719; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 29, 1997.

[FR Doc. 97–29103 Filed 11–3–97; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR4263–N–49]**

### Submission for OMB Review: Comment Request

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: December 4, 1997.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll/free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 28, 1997.

**David S. Cristy,**

*Director, Information Resources, Management Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Issuer Eligibility and Integrity Reform.

*Office:* Government National Mortgage Association (GNMA).

*OMB Approval Number:* 2503–0027.

*Description of the Need for the Information and Its Proposed Use:* The information collection is needed to enable GNMA to properly screen new applicants, approve commitment request, and determine continuing issuer eligibility. The information collected will continue to enable GNMA to hold issuers to higher eligibility and integrity standards.

*Form Number:* None.

*Respondents:* Business or other for-profit and the Federal Government.

*Frequency of Submission:* Annually.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 620 | | 1 | | 8.25 | | 5,113 |

*Total Estimated Burden Hours:* 5,113.

*Status:* Reinstatement, with changes.

*Contact:* Sonya K. Suarez, HUD, (202) 708–2772 X4975; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 28, 1997.

[FR Doc. 97–29104 Filed 11–3–97; 8:45 am]

**BILLING CODE 4210–01–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[(CA–067–5101–01–B091); CACA–38448]**

### Proposed Plan Amendment

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management (BLM) has proposed a plan amendment to the California Desert Conservation Area Plan to partially exempt a proposed fiber optic cable right-of-way from a utility corridor for a portion of the proposed alignment.

**DATES:** Written scoping comments must be received no later than December 3, 1997.

**ADDRESSES:** Written scoping comments should be addressed to the District Manager, Attn: Plan Amendment, California Desert District, 6221 Box Springs Blvd., California 92507.

**FOR FURTHER INFORMATION CONTACT:** James L. Williams (909) 697–5390.

**SUPPLEMENTARY INFORMATION:** A proposed fiber optic cable from Las Vegas, Nevada, utilizes a conduit along Highway 95 to near the Nevada-California State line. In California, it would continue down Highway 95 and then within Goffs road. This alignment is not designated as a utility corridor by the California Desert Plan. The proposed right-of-way is within utility corridors H, G, and O until near the city of Adelanto where the proposed right-of-way leaves corridor O and continues within county roads which are not a designated utility corridor to Palmdale.

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or business, and from individuals identifying themselves as representatives or officials of organization or business, will be made available for public inspection in their entirety.

Dated: October 29, 1997.

**Alan Stein,**

*Acting District Manager.*

[FR Doc. 97–29115 Filed 11–3–97; 8:45 am]

**BILLING CODE 4310–40–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–360–1220–00]**

### Interlakes Special Recreation Management Area Plan and Final Environmental Impact Statement (FEIS)

**AGENCY:** Bureau of Land Management (BLM), Redding Resource Area, NORCAL District, California.

**ACTION:** Notice of availability of a plan and FEIS.

**SUMMARY:** BLM has released a plan and FEIS covering land management options and anticipated consequences regarding the Interlakes Special Recreation Management Area. Preparation of this plan and FEIS is a joint effort between the BLM, U.S. Forest Service, National Park Service, and Bureau of Reclamation. BLM was directed to lead this planning effort under BLM's Record of Decision for the Redding Resource Management Plan and EIS which was

prepared under the authority of the Federal Land Policy and Management Act of 1976 (section 202). This plan and FEIS is prepared under the authority of the National Environmental Policy Act of 1969.

**SUPPLEMENTARY INFORMATION:** The Interlakes Special Recreation Management Area is a 74,850 acre region which encompasses lands administered through the United States Department of the Interior's BLM, National Park Service, Bureau of Reclamation, and the Department of Agriculture's Forest Service. Once approved, this plan will guide management activities for the BLM for the next 10 to 15 years. The National Park Service, Bureau of Reclamation and U.S. Forest Service may approve this plan by continuing with this joint planning effort and approving a Record of Decision, or may implement portions of this plan by tiering to this document within their own planning documents.

**DATES:** Comments on this plan and FEIS should be submitted in writing by December 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Schultz, Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, CA 96002.

Dated: October 27, 1997.

**Francis Berg,**

*Acting Area Manager.*

[FR Doc. 97–29111 Filed 11–03–97; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Record of Decision

**AGENCY:** National Park Service, Interior.

**ACTION:** Record of Decision.

**SUMMARY:** Pursuant to regulations promulgated by the Council on Environmental Quality (40 CFR Section 1505.2) and the implementing procedures of the National Park Service (NPS) for the National Environmental Policy Act of 1969 (40 U.S.C. 1501 *et seq.*), the NPS has prepared this Record of Decision with respect to the general management plan and final environmental impact statement, Missouri/Niobrara/Verdigre Creek National Recreational Rivers, Nebraska and South Dakota. This Record of Decision describes the recreational river management alternatives considered, mitigating measures adopted to avoid or minimize environmental impacts, and the reasoning behind the decisions reached.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Niobrara/Missouri National Scenic Riverways, 114 North Sixth Street, O'Neill, Nebraska 68763–0591, or 402–336–3970.

**SUPPLEMENTARY INFORMATION:** Pub. L. 102–50, the Niobrara Scenic River Designation Act of 1991, amended section 3(a) of the Wild and Scenic Rivers Act of 1968 to designate as recreational rivers sections of the Missouri River, Niobrara River, and Verdigre Creek as listed below:

*Missouri River:* The 39-mile section from the headwaters of Lewis and Clark Lake to the Fort Randall Dam.

*Niobrara River:* The segment from the western boundary of Knox County to its confluence with the Missouri River (20 miles).

*Verdigre Creek:* The segment from the north municipal boundary of Verdigre, Nebraska, to its confluence with the Niobrara River (8 miles).

The Act states these segments shall be administered by the Secretary of the Interior, who has delegated the task of planning and operation to the NPS. As such, the three segments have become a unit of the National Park System.

The Wild and Scenic Rivers Act directs the administering agency to prepare a management plan and establish final boundaries for protection of important resources along designated rivers. The Act requires the managing agency to emphasize the protection of scenic, historic, archeological, and scientific features. It states that recreational use may be permitted as long as these values are not jeopardized. Under the Act, the boundary is 0.25 mile from the ordinary high water mark on both sides of the rivers until a final boundary is established.

Decisions for management and boundary: The NPS selects Alternative 5, the Preferred Alternative, for management of the National Recreational Rivers. The Preferred Alternative was developed by the planning team by combining aspects of two other action alternatives. It includes resource protection and a boundary similar to alternative 3 and a management philosophy similar to alternative 2. This alternative neither encourages nor discourages increased visitor use. It also does not encourage additional or expanded agricultural practices. It strongly discourages construction of residences or other private development. Boundaries were delineated to include important river-related habitat. Implementation of natural resource objectives would take precedence over other objectives where possible without loss of significant cultural resources. Management actions would be accomplished through cooperative associations with landowners, county governments, state and federal agencies, and private interest groups.

The NPS will remain the administrator of the recreational rivers as authorized by Congress. The degree of NPS presence will depend on the success of local governments in maintaining existing landscapes and providing for recreational uses. To fulfill its river management responsibilities, the NPS will continue to have staff on or near the river to manage inherently federal requirements of the law, administer cooperative agreements, and monitor ongoing water, land and visitor use activities along the designated rivers.

Alternative 5 emphasizes management for conserving, protecting, and restoring riverine biological diversity on public land and includes potential for technical assistance and incentives for private property owners to do the same. Implementation on private land would take place through local protection and restoration efforts, including federal standards for minimum protection requirements and the use of regulations and a flexible package of financial incentives, funding options, and technical assistance.

Local concerns were expressed during public meetings regarding: an unwanted influx of visitors on the river; dangers the dynamic nature of the river presents to novice users; and increased river bank erosion caused by additional power boat use. Because of those concerns this alternative allows only for the replacement of river access sites lost to sedimentation and the improvement (not expansion) of existing facilities. Present recreational uses will continue (fishing, boating, hunting, etc.) and there could be expansion of visitor services and facilities as long as they did not add significant numbers of people to the river.

The Alternative 5 boundary for the 39-mile stretch of the Missouri River includes the river, its islands, and a minimum setback of 200 feet from the 1991 ordinary high water mark (32,000 cfs). Also included is the Karl Mundt National Wildlife Refuge and all other federal and state fee land within 0.25 mile of the river. In addition, significant cottonwood stands and land that would be covered by a U.S. Army Corps of Engineers (COE) high release of 60,000 cfs is included within the boundary. All fee and easement lands included in the boundary will continue to be managed by the present land managers.

For the Niobrara and Verdigre Creek National Recreational Rivers the boundary includes the rivers, its islands, a minimum setback of 200 feet from the ordinary high water mark, and significant natural areas as identified by the Nebraska Game and Parks Commission. The Niobrara National Recreational River boundary includes land that would be affected by a rise in the groundwater table as projected by the COE.

Other management alternative considered:

*Alternative 1, No Action:* In the no-action alternative the river area would continue to evolve without benefit of a coordinated, comprehensive effort by the NPS and its partners and generally would continue current trends. The current conditions include a mix of private property with some local, state, U.S. Fish and Wildlife Service, and COE management. Existing conditions would continue with varied management under federal, state, and local laws and by property owners with minimal coordination. The NPS would assign an individual to provide minimal monitoring of conditions along the rivers and limited coordination and review among federal, state, and local agencies. Other managing agencies, whether federal, state, or local, would work from existing offices and NPS staff would work at an undetermined location.

The designation act established an interim boundary during the planning period. The boundary includes the three rivers, their islands, and land within 0.25 mile of the 1991 ordinary high water mark on each side of the rivers (see alternative 1 maps). The 0.25-mile boundary would remain in place under this alternative.

Protection of the scenery and natural features would depend on existing or developing programs including county zoning, voluntary landowner covenants, and other private land strategies. It would be unrealistic to believe any of these controls or strategies would have as their primary goal the maintenance of wild and scenic river values. Therefore, the no action alternative was determined not to implement the Wild and Scenic Rivers Act on these rivers as Congress has directed and intended. The long-term protection of the river and adjacent land and provision of a good quality visitor experience could not be ensured under this alternative.

*Alternative 2, Rural Landscape Integrity and Character:* This alternative would emphasize the rural landscape. It would maintain patterns of land use while protecting significant natural and cultural resources. This alternative seeks to stabilize visitor use at or near current levels. It allows for limited construction of new residences or other private development. Implementation of rural landscape objectives would be emphasized as long as significant natural and cultural resources were not compromised.

Alternative 2 would rely heavily on the cooperation of local property owners and officials. Private land would be managed through local means such as zoning, land use management plans, or property owner agreements. The alternative would rely on counties and property owner agreements to develop standards for protecting private land and meeting the objectives and goals of this plan and the Wild and Scenic Rivers Act. Local plans consistent with the recreational river legislation incorporating voluntary practices that preserve the landscape and river values would be developed in cooperation with the NPS.

The visitor experience under alternative 2 would be similar to the activities, orientation, and interpretation presently available. Interpretation and information would emphasize safety and preservation of the recreational rivers' values. Additional interpretation emphasizing land stewardship and the integrity of the landscape could be offered through cooperative efforts.

The boundaries for the Missouri and Niobrara river segments under this alternative would include the river and its islands and be established as a 200-foot setback from the 1991 ordinary high water mark. COE land within 0.25 mile of the river is within the boundary. Along the Missouri River segment the Fort Randall historic site, Niobrara State Park, Verdel Landing, and Karl Mundt National Wildlife Refuge would be included to help depict the rural agrarian, natural, and historic character of the landscape. The Verdigre Creek boundary would be established as a 200-foot setback from the riverbank. All fee and easement lands included within the boundary would continue to be managed by the present land managers.

Total land area above the 1991 ordinary high water mark for the Missouri National Recreational River would be 4,718 acres. Total land area above the 1991 ordinary high water mark for the Niobrara National Recreational River and Verdigre Creek would be 1,559 acres.

Although NPS actions under this alternative would have minimal negative impacts to any of the resources, the boundary would not include some significant bottomland and periodically flooded areas that contribute to the biologic integrity of the river. The NPS has determined that alternative 2 is minimally acceptable in meeting the intent of the Wild and Scenic Rivers Act.

*Alternative 3, Riverine Biological Management:* This alternative would emphasize the recreational rivers' biological diversity. It would improve the quantity, quality, and diversity of native plant and animal (primarily aquatic) habitat. A meandering river, eroding banks, sandbars, backwater areas, cottonwood forests, and instream snag habitat were characteristics of the pre-dam river that would be recreated where feasible.

This alternative neither encourages nor discourages increased visitor use. It also does not encourage additional or expanded agricultural practices. It strongly discourages construction of residences or other private development. Boundaries were delineated to include important river-related habitat. Implementation of natural resource objectives would take precedence over other objectives where possible without loss of significant cultural resources.

The primary goal of this alternative would be to protect and restore the Missouri River and the lower stretches of the Niobrara River and Verdigre Creek as a nearly natural ecosystem.

The boundary for the Missouri National Recreational River under this alternative would include the river, its islands, and a minimum setback of 200 feet from the 1991 ordinary high water mark. Also included is the Karl Mundt National Wildlife Refuge and all other federal and state land within 0.25 mile of the river. Other criteria used in determining the remaining land inside the boundary include significant biological bottomland as defined by the Nebraska Game and Parks Commission and land that would be covered by a COE release of 60,000 cfs. All fee and easement lands included within the boundary will continue to be managed by the present land managers.

The boundary for the Niobrara National Recreational River would include a minimum setback of 200 feet from the riverbank plus significant biological bottomland areas as identified by the Nebraska Game and Parks Commission. Also included are COE projections for areas that might be affected by a rise in the water table. The Verdigre Creek boundary would include a minimum setback of 200 feet from the riverbank plus significant biological bottomland as identified by the Nebraska Game and Parks Commission. Total land area above the 1991 ordinary high water mark for the Missouri National Recreational River would be

10,463 acres. Total land area above the 1991 ordinary high water mark for the Niobrara National Recreational River and Verdigre Creek would be 5,962 acres.

The NPS has determined that this alternative would be fully acceptable and would meet the intent of the Wild and Scenic Rivers Act.

*Alternative 4, Visitor Use Balanced with Resources Protection:* Consistent with resource protection and goals and objectives of the general management plan, implementation of recreational uses would be emphasized in this alternative. The NPS and its partners would be actively involved in day-to-day management of the rivers. Private and public recreational development (including river access points, scenic roads, trails, and structures) would remain, and some future expansion is envisioned. Land needed for visitor facilities would be acquired from willing sellers. Additional sites or improvements are proposed in Nebraska near the Pishelville Bridge, Sunshine Bottom, and Verdigre Creek. Additional locations for primitive camping along the river could be developed if warranted by increased recreation demand. Interpretation of cultural and natural resources would be important for resource protection as well as for visitor education and enjoyment.

Natural features of the landscape would be maintained, such as sandbars and beaches, backwater areas for recreational fishing, and open spaces. Cooperative efforts to enhance backwater areas, sandbars, and other habitats would be encouraged to preserve resources and increase recreational fishery and wildlife viewing opportunities. Significant resources would be inventoried and monitored to protect river-related resources from visitor use and other recreational stresses.

This alternative encourages the continuation of agricultural practices and landscapes as important elements of pastoral scenes that visitors can enjoy. It encourages compatible agricultural practices, and it allows for an increase in construction of residences within the residential and other private development land class.

The boundary would include a minimum setback of 200 feet from the riverbank, plus significant resource areas and potential public use areas on the rivers. Karl Mundt National Wildlife Refuge, Niobrara State Park, and Fort Randall historic site are included within the boundary in this alternative because they are public facilities that contribute to the goals of the alternative. Other state land and COE fee land within 0.25 mile of the 1991 ordinary high water mark would also be included. All fee and easement land included within the boundary would continue to be managed by the present land managers.

Total land area above the 1991 ordinary high water mark for the Missouri National Recreational River is 6,443 acres. Total land area above the 1991 ordinary high water mark for the Niobrara National Recreational River and Verdigre Creek is 1,492 acres.

The NPS feels this alternative allows for the protection of sufficient bottomlands and other biologically important lands to fully comply with the Wild and Scenic Rivers Act. Because of local concerns regarding increased river traffic this alternative was not selected.

*Measures to Minimize Harm:* Because few specific land purchase or construction projects are proposed and the alternatives are general strategies for long-term management, the consequences are assessed in general terms. Foreseeable short term impacts are identified along with long-term impacts and potential mitigating measures. The impacts of all the action alternatives are similar.

Recreational use of the river has been relatively stable but with no coordinated management. The selected alternative provides for increased visitor management and for controls to be placed on visitor use if resources are threatened by that use or if negative visitor experiences result from increased use of the rivers.

New boat access areas are permitted to replace access areas lost to sedimentation. The selected sites could cover several acres each. Some habitat would be lost, temporary construction induced siltation could occur, but would be minimized through appropriate construction techniques. Public access sites would be checked for fossils or cultural artifacts before and during construction. If either were found the state historical society and/or appropriate Indian tribes would be consulted.

Suggested guidelines for development are available in each alternative. Recreational home developments have been occurring along the Missouri River. The selected alternative acts to control these developments. Currently there is no zoning in any of the counties. Along with the guidelines, cooperative land owner agreements, voluntary easements, and deed restrictions could be used to control development. If the guidelines and other methods of control are not successful and continued development threatens river resources the plan states that the current policy of no-condemnation will have to be revisited.

Farming and ranching are recognized as valuable tools in maintaining the rural nature of the area. Current levels of use and methods have not been detrimental to the rivers and no controls are foreseen. The NPS would encourage best management practices be in place and for good land stewardship to continue.

Specific impacts and measures that would be taken to mitigate potential negative impacts are described in the Final Environmental Impact Statement on pages 144–187. Compliance with existing laws and executive orders is described on pages 188–193.

Comments on the draft and final general management plan and environmental impact statement (GMP/EIS): The draft GMP/EIS was released to the public on July 12, 1996. Approximately 1,100 copies of the draft plan were mailed to federal, state, and local officials, organizations, and individuals. Public meetings were held between August 13–21 in Yankton, Pickstown, Springfield, and Wagner, South Dakota; and Norfolk, Niobrara, Verdigre, Verdel, and Spencer, Nebraska. The public comment period ended September 14, 1996.

A total of 75 written comments were received during the public review period. A majority of the comments came from the local area and suggested the rivers be deauthorized as a component of the Wild and Scenic Rivers System. Because this would require an additional act of Congress, the NPS cannot comply with these suggestions, and would not support such a proposal.

Some comments were directed towards the silt aggradation occurring in the Missouri and Niobrara rivers. The siltation is a result of decreased water flow velocity as it enters Lewis and Clark Lake. The reduced water velocity decreases the silt load carrying capacity of the river and causes deposition (aggradation). This is not a result of the recreational river designation or the general management plan. The NPS has agreed to work cooperatively with the COE to explore viable solutions to the problem.

In July 1997 the final GMP/EIS was printed and distributed to more than 300 individuals, agencies, and organizations. In the document the NPS named the preferred alternative and boundary. There were seven comments received on the final plan, one from a federal agency, two from private organizations, and four from landowners. To the extent possible comments and concerns therein have

been addressed in the following section and/or other sections of this document.

Clarifications requested through written comments: The NPS would consider boat access areas inside and outside the boundary that serve the recreational rivers as replaceable if substantial access was lost as a result of sediment aggradation in the river. Ramps lost outside the recreational river boundary could be replaced within the boundary. Examples of access areas serving the recreational rivers that are lost, or threatened are the Missouri River access areas at Springfield and Running Water, South Dakota, and Niobrara, Nebraska.

The NPS decision to not actively promote recreational use on the river was based on input of the Federal Advisory Commission in consultation with the Secretary of the Interior during the development of the plan, by local representatives on the planning team, and by comments received from the general public during the planning process. The Wild and Scenic Rivers Act, Section 10(a) allows for ''management plans for any such component'' to ''establish varying degrees of intensity for its protection and development, based on the special attributes of the area.'' In this case the NPS feels there are legitimate safety concerns resulting from shifting sand bars and a significant increase in power boat use on the Missouri National Recreational River. Canoeing danger exists from the high winds that frequent the area and the width of the river. While the NPS has agreed not to actively promote increased use there is recognition in the plan that increased use may occur as the result of actions taken by others. As long as those actions do not threaten river resources or add significant visitor numbers to the river NPS will act to guide such growth rather than restrict it.

While local governments clearly have existing local law enforcement responsibilities and cooperative relations will be sought, all references to law enforcement in the final plan should be understood to mean that the NPS will not delegate Federal law enforcement responsibilities with respect to the water surfaces and on lands it owns, or other inherently Federal responsibilities as described in the statutes related to the administration of the National Park System, the Wild and Scenic Rivers Act, and the Act establishing the Missouri/Niobrara/Verdigre Creek National Recreational Rivers.

The COE has purchased flood easements on some of the periodically flooded land along the Missouri and Niobrara rivers. This land remains in private landownership but the COE possesses the right to flood the land. The NPS would not affect the easement relationship between private landowners and the COE. Neither would the NPS boundary alter the payments under the Payment in Lieu of Taxes Act. The periodically flooded land is included within the boundary not because it is COE easement land but because of its contribution to fish and wildlife habitat.

Currently the Yankton Sioux Tribe is challenging the size and location of its reservation boundary. When a final outcome is determined the NPS will honor the final court decision. Until that time any NPS management actions within the disputed area will be minimal and dependent on cooperative agreement with private landowners and the Yankton Sioux Tribe.

The recreational river boundary maps depicted in the final GMP include public lands such as the USFWS Karl Mundt National Wildlife Refuge, as well as easement lands. The Vicinity/Study Area map on page 5 inadvertently portrayed USFWS easement land as a part of the refuge. That easement is not part of the Karl Mundt Refuge and should not have been portrayed as such on that map. The maps on pages 29, 49, 61, 73, and 87 accurately portray the easement land but the arrow points to it as a part of the Karl Mundt Refuge. That arrow should have been pointing to the lower section that is a part of the refuge and not to the easement land. The maps in the final GMP/EIS are designed to be general and for orientation purposes only, and have no formal standing. When the official boundary map for this unit is published the above mentioned errors will be corrected.

Selection of the preferred alternative: All of the action alternatives for management of the rivers are considered acceptable from an environmental standpoint. The boundaries vary with each alternative and preference was placed on the alternatives that included significant wetlands and bottomlands. The preferred alternative was selected because it is considered the most effective alternative for meeting the legislative intent of protecting river values and maintaining the existing economic uses along the river. This alternative will require a minimum of Federal land acquisition, which is consistent with legislative intent. The selected alternative is not expected to have any significant adverse effects on natural or cultural values in the recreational river boundaries.

Dated: October 27, 1997.

**David N. Given,**

*Deputy Regional Director, Midwest Region.*

[FR Doc. 97–29131 Filed 11–3–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Dayton Aviation Heritage Commission; Notice of Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets the schedule for the forthcoming meeting of the Dayton Aviation Heritage Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

**DATE, TIME, AND ADDRESS:** Tuesday, December 2, 1997, 5:15 p.m. to 6:30 p.m., Innerwest Priority Board conference room, 1024 West Third Street, Dayton, Ohio 45407.

This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the Superintendent, Dayton Aviation, 1 week prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:** William Gibson, Superintendent, Dayton Aviation, National Park Service, P.O. Box 9280, Wright Brothers Station, Dayton, Ohio 45409, or telephone 513–225–7705.

**SUPPLEMENTARY INFORMATION:** The Dayton Aviation Heritage Commission was established by Public Law 102–419, October 16, 1992.

Dated: October 24, 1997.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 97–29130 Filed 11–3–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 25, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written

comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 19, 1997.

**Carol D. Shull,**

*Keeper of the National Register.*

**CALIFORNIA**

**San Benito County**

McCallum, aRoy D., House (Hollister MPS) 1401 San Benito St., Hollister, 97001445

**San Diego County**

Santa Fe Land Improvement Company House, 6036 La Flecha, Rancho Santa Fe, 97001460

**CONNECTICUT**

**New Haven County**

Southern New England Telephone Company Adminstrative Building, 227 Church St., New Haven, 97001447

**Windham County**

Canterbury Center Historic District, Roughly along Elmdale, Library, N. Canterbury, S. Canterbury, and Westminster Rds., Canterbury, 97001446

**FLORIDA**

**Orange County**

Knowles Memorial Chapel, 1000 Holt Ave., Winter Park, 97001448

**MARYLAND**

**Charles County**

Pleasant Hill, 9205 Marshall's Corner Rd., Pomfret vicinity, 97001449

**MASSACHUSETTS**

**Worcester County**

Gay, Rev. Samuel, House, 10 Williamsville Rd., Hubbardston, 97001450

**MONTANA**

**McCone County**

Lewis and Clark Bridge, Over the Missouri R., MT 13, Wolf Point vicinity, 97001451

**Phillips County**

Saco Mercantile, 201 Taylor St., Saco, 97001452

**Ravalli County**

Methodist Episcopal Church South, Jct. of First St. and Eastside Hwy., Corvallis, 97001453

**NEW YORK**

**Monroe County**

Maplewood Historic District, Roughly along Lakeview Park, Lake Ave., Seneca Pkwy., and Maplewood Ave., Rochester, 97001454

**Orleans County**

Main Street Historic District Boundary Increase, 530 West Ave., Medina, 97001457

**Otsego County**

All Saints Chapel and Morris Family Burial Ground, NY 51, 3 mi. S of Morris, Morris vicinity, 97001455

Zion Episcopal Church Complex and Harmony Cemetery, E of Morris, NY 51, Morris vicinity, 97001456

**Steuben County**

US Post Office—Hornell (US Post Offices in New York State MPS) 50 Seneca St., Hornell, 97001458

**Wayne County**

Methodist Episcopal Church of Butler, Butler Center Rd., jct. with Washburn Rd., Butler Center, 97001459

**OHIO**

**Columbiana County**

Harris, Franklin, Farmstead, 3525 Depot Rd., Salem vicinity, 97001462

**Franklin County**

Kahiki, The, 3583 E. Broad St., Columbus, 97001461

**TENNESSEE**

**Knox County**

Wilder, Gen. John T., House, 2027 Riverside Dr., Knoxville, 97001463

**UTAH**

**Sanpete County**

Oberg—Metcalf House, 12 N 100 E, Gunnison, 97001464

**Uintah County**

Gibson—Sowards House, 3110 N 250 W, Vernal, 97001465

[FR Doc. 97–29109 Filed 11–3–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

**[DES97–40]**

## Bureau of Reclamation

## East Bay Municipal Utility District Supplemental Water Supply Project, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability and notice of public hearing of the Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS).

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Policy Act (CEQA), the East Bay Municipal Utility District (EBMUD) and the Bureau of Reclamation (Reclamation) have prepared a DEIR/DEIS for the proposed Supplemental Water Supply Project in Sacramento and the Bay Area service areas. Public hearings will be held in a number of sessions to receive oral or written comments on the DEIR/DEIS by interested parties, organizations, and individuals.

**DATES:** Public comments on the DEIR/DEIS should be submitted on or before January 5, 1998. See Supplementary Information section for public hearing dates and addresses.

**ADDRESSES:** Written comments on the DEIR/DEIS, requests for copies of the DEIR/DEIS, and requests to speak at the hearing should be addressed to Ms. Ann Reis, EBMUD P.O. Box 24055, Oakland, CA 94623–1055.

**FOR FURTHER INFORMATION CONTACT:** For additional information, please contact Mr. Kurt Ladensack, EBMUD, (510) 287–1197; or Mr. Roderick Hall, Reclamation, (916) 989–7279.

**SUPPLEMENTARY INFORMATION:** EBMUD currently holds a contract with Reclamation, signed in 1970, for delivery of up to 150,000 acre-feet per year from the existing Folsom South Canal (FSC). The existing contract specifies a delivery location at an existing turnout structure near Grant Line Road in Sacramento County. The proposed action is for EBMUD to obtain a supplemental water supply to assist in reducing customer deficiencies during droughts, and providing system reliability and to allow EBMUD to make use of its existing contract with Reclamation for delivery of water from the American River. Two primary alternatives are under consideration, and alternate project configurations of one of these primary alternatives also are being considered.

The first alternative is an EBMUD-only project that involves deliveries from the American River via FSC to a new pipeline connection between FSC in south Sacramento County and EBMUD's Mokelumne Aqueducts in San Joaquin County. Alternate project alternatives under consideration involve pipeline connections from the turnout location described above, which would not require an amendment of the existing water service contract, and from the terminus of FSC, which would require an amendment of the water service contract.

The second alternative involves a joint project between EBMUD, the City of Sacramento (City), and the County of Sacramento (County). Under this project alternative, water for EBMUD and the County would be delivered through a new intake location on the American River near its confluence with the Sacramento River. Water for the City would be diverted under existing entitlements through an expansion of existing diversion and treatment

facilities on the American and Sacramento rivers. A new pipeline would be constructed to convey the water to the City's E.A. Fairbairn Water Treatment Plant and to a point on FSC. Water for EBMUD would then be conveyed from that point through FSC to its terminus, where a new pipeline would be constructed to convey the water to EBMUD's Mokelumne Aqueducts.

The DEIR/DEIS describes the environmental effects of taking delivery of water under EBMUD's contract from the FSC and from the lower American River near its confluence with the Sacramento River. Emphasis is directed toward potential effects related to American River fisheries, endangered species, Central Valley Project water users, pipeline construction, and biological resources in the EBMUD service area.

**Public Hearings**

Public hearings to receive comments on the DEIR/DEIS will be held as follows:

- December 1, 1997, from 6:00 to 8:00 p.m. at the EBMUD Training Room, 375 Eleventh Street, Oakland, California
- December 3, 1997, from 6:00 to 8:00 p.m. at the Littleton Community Center, 420 Civic Drive, Galt, California
- December 4, 1997, from 6:00 to 8:00 p.m. at the Loel Senior Center, 105 South Washington Street, Lodi, California
- December 9, 1997, from 6:30 to 8:30 p.m. at the Sequoia Elementary School, 3333 Rosemont Drive, Sacramento, California
- December 11, 1997, from 7:00 to 9:00 p.m. at the Hart Senior Center, 915 27th Street, Sacramento, California

Requests to speak may be made at the hearing; these speakers will be called upon in order at the meeting. Oral comments/presentations will be limited to 10 minutes per individual.

The hearing facilities have disabled access, but there are no facilities for the deaf. A telephone device for the hearing impaired (TDD) is not available.

**DEIR/DEIS Public Inspection and Review**

Copies of the DEIR/DEIS are available for public inspection and review at the following locations:

1. East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607–4240.
2. Sacramento County Water Agency, 827 Seventh Street, Room 301, Sacramento, CA 95814.
3. City of Sacramento Utilities Department, 5770 Freeport Boulevard, Suite 100, Sacramento CA 95822.
4. Sacramento County Clerk-Recorder's Office, 600 Eighth Street, Sacramento, CA 95814.
5. Bureau of Reclamation, 2800 Cottage Way, Room E–1704, Sacramento, CA 95825.
6. Bureau of Reclamation, Folsom Area Office, 7794 Folsom Dam Road, Folsom, CA 95630.
7. Library, Bureau of Reclamation, 6th Avenue and Kipling, Room 167, Building 67, Denver Federal Center, Denver, CO 80225–0007.
8. Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington DC 20240–0001.
9. Sacramento Central Library, 828 I Street, Sacramento, CA.
10. Lodi Public Library, 201 W. Locust Street, Lodi CA 95240
11. Caesar Chavez Central Library, 605 N. El Dorado Street, Stockton CA 95202.
12. Science, Social Science & Government Documents Department, Oakland Public Library, 125 14th Street, Oakland CA 94612.
13. Contra Costa County Clerk's Office, 730 Las Juntas, Martinez CA 94553.
14. Alameda County Clerk's Office, 1225 Fallen Street, Oakland CA 94612.
15. San Joaquin County Clerk's Office, 24 S. Hunter, Room 304, Stockton CA 95202.

Dated: October 29, 1997.

**Kirk C. Rodgers,**

*Deputy Regional Director.*

[FR Doc. 97–29137 Filed 11–3–97; 8:45 am]

BILLING CODE 4310–94–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Proposed Orange County Regional Water Reclamation Project (OCR Project), Orange County, California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent (NOI) to prepare a draft environmental impact statement (EIS) and notice of scoping meetings.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare a draft EIS on the proposed Orange County Regional Water Reclamation Project, Orange County, California. Reclamation proposes to partially fund this joint project with the Orange County Water District (OCWD) and County Sanitation Districts of Orange County (CSDOC).

**DATES AND ADDRESSES:** Two formal scoping meetings in connection with preparation of the draft EIS are scheduled to be held as follows:

November 18, 1997–3:00 to 4:30 p.m. and 7:00 to 8:30 p.m., Orange County Water District, 10500 Ellis Avenue, Fountain Valley, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Del Kidd, Environmental Protection Specialist, Bureau of Reclamation, (Mail Stop LC–2511), Environmental Compliance Group, P.O. Box 61470, Boulder City, NV, 89006–1470, Telephone: (702) 293–8698 or Ms. Tama Snow, Senior Engineer, Orange County Water District, Advance Planning Group, P.O. Box 8300, Fountain Valley, CA 92728–8300, Telephone: (714) 378–3200.

**SUPPLEMENTARY INFORMATION:** The Orange County Water District (OCWD) and the County Sanitation Districts of Orange County (CSDOC) propose to develop an advanced water treatment plant, pipeline and related facilities within the Cities of Fountain Valley, Santa Ana, Orange, Garden Grove, and Anaheim. The OCR Project will further process water from the County Sanitation Districts of Orange County. The water from CSDOC, which is typically discharged into the ocean, will be treated through a sophisticated, advanced water treatment process that will include microfiltration, reverse osmosis and disinfection. The mirofiltration process uses a series of microscopically fine filters to remove fine particles, nitrogen, salts, and organic matter that might be in the water. The water from this advanced treatment process will be of better quality than the current water that is infiltrated into the groundwater basin from the Santa Ana River and will surpass (be cleaner and better than) the drinking water standards set by the U.S. Environmental Protection Agency, the California Department of Health Services and other healths and regulatory agencies.

The water from this process will be piped to injection wells to create a barrier against saltwater intrusion and to spreading fields for infiltration into the groundwater basin. The OCR Project will provide a new, reliable water supply to meet increased demands for potable water within the OCWD service area and continue to protect the existing groundwater from further contamination from seawater intrusion. OCR Project water will also be used to supplement the existing Green Acres Project which uses recycled water for landscape irrigation and industrial applications. The project will help reduce the dependency on the uncertain water supplies currently received from

northern California and the Colorado River.

Extensive evaluations have been conducted over the past seven years to define and determine the feasibility of a reclamation project. A study was performed by OCWD to evaluate the water supply alternatives to meet the future needs of Orange County Water District's customers. The OCR Project was identified to be one of the most reliable and cost effective project alternatives to providing a new local water supply to Orange County. The project is proposed to be implemented in three phases. Phase I is proposed to be implemented by the year 2003 and would supply 50,000 acre-feet per year (afy) (one afy is enough water to supply two families of four for an entire year). Phases II and III would supply an additional 25,000 afy by the years 2010 and 2020 respectively, or sooner if required.

An EIS will be prepared and a full environmental analysis will be completed to address any significant impacts the project may have on the surrounding environment. The draft EIS is expected to be completed and available for review and comment by April, 1998.

The present investigation began in 1994. Since that time, OCWD and CSDOC have held public meetings to discuss study progress with interested individuals and affected agencies. Additional public meetings will be scheduled to encourage public and agency involvement in the study and the environmental analysis.

Dated: October 21, 1997.

**John A. Johnson,**

*Deputy Director, Resource Management Office.*

[FR Doc. 97–29142 Filed 11–3–97; 8:45 am]

BILLING CODE 4310–94–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Ecosystem Roundtable Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** The Ecosystem Rountable (a subcommittee of the Bay-Delta Advisory Council) (BDAC) will meet in November to discuss the following issues: an update on restoration coordination and the CVPIA FY 98 annual workplans. The Ecosystem Rountable will also meet in December to discuss the following issues: the planning and decision making process for the 1998 funding cycle. Interested persons may make oral statements to the Ecosystem Rountable or may file written statements for consideration.

**DATES:** The Ecosystem Rountable will meet from 9:30 a.m. to 12:30 p.m. on Friday, November 14, and 9:30 a.m. to 12:30 p.m. on Thursday, December 4, 1997.

**ADDRESSES:** The Ecosystem Rountable will meet in Room 1412, 1416 Ninth Street, Sacramento, CA for the November meeting and Room 1131, 1416 Ninth Street, Sacramento, CA for the December meeting.

**CONTACT PERSON FOR MORE INFORMATION:** For the Ecosystem Rountable meeting contact Kate Hansel, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

**SUPPLEMENTARY INFORMATION:** The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management desicions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The CALFED Bay-Delta Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC provides a forum to help ensure pubic participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Rountable to provide input on annual work plans to implement ecosystem restoration projects and programs.

Minutes of the meetings will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 29, 1997.

**Roger Patterson,**

*Regional Director, Mid-Pacific Region.*

[FR Doc. 97–29112 Filed 11–3–97; 8:45 am]

BILLING CODE 4310–94–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Request for Determination of Valid Existing Rights Within the Monongahela National Forest

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of request for determination of valid existing rights, reopening and extension of the comment period.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is in the process of determining whether Mr. Walter D. Helmick has valid existing rights (VER) to surface mine coal on Federal lands within the Monongahela National Forest in Pocahontas County, West Virginia. By this notice, OSM is reopening and extending the comment period during which interested persons may submit relevant factual material on the matter.

**DATES:** OSM will accept written materials on this request for a VER determination until 5 p.m. local time on November 12, 1997.

**ADDRESSES:** Hand deliver or mail written materials to: Peter R. Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, room 218, Three Parkway Center, Pittsburgh, PA 15200.

Documents contained in the Administrative Record are available for public review at the locations listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15200, Telephone: (412) 937–2867.

Office of Surface Mining Reclamation and Enforcement Charleston Field Office, 1027 Virginia Street E, Charleston, WV 25301, Telephone: (304) 347–7158.

**FOR FURTHER INFORMATION CONTACT:** Peter R. Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15200, Telephone: (412) 937–2867.

**SUPPLEMENTARY INFORMATION:** On October 16, 1997 (62 FR 53798) OSM published a notice soliciting factual material for consideration in determining whether Mr. Walter D. Helmick has VER to surface mine coal on Federal lands within the Monongahela National Forest in Pocahontas County, West Virginia. If OSM determines that Mr. Helmick has VER, he may apply to the West Virginia Department of Energy for a permit authorizing the surface and auger mining of coal on the land in question. If it is determined that Mr. Helmick does not have VER, no surface of auger mining will be permitted.

The original comment period closed on October 31, 1997. During the comment period. OSM received a request for a 7 day extension. By this notice, OSM is extending the comment period during which interested persons may submit relevant factual material on the matter. The **Federal Register** notice published on October 16, 1997, contains additional background information.

Dated: October 29, 1997.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

[FR Doc. 97–29110 Filed 11–03–97; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Pursuant to the Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with the Departmental policy, 28 CFR § 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on October 16, 1967, the trustees for natural resources at the Tulalip Landfill Superfund Site on Ebey Island in Puget Sound, Washington (''the Site'') lodged with the United States District Court for the Western District of Washington a civil natural resource damages complaint against defendants the Boeing Company, Kaiser Cement Corporation, Safeway Inc., Richard Halffman, Washington Iron Works, Seattle Goodwill Industries, Manson Construction Co., Inc. and R.W. Rhine, Inc. in the civil action styled *United States* v. *The Boeing Company, et al.*, Civil Action No. 97–1648–WD. On the same day, the trustees lodged two consent decrees resolving the trustees claims against all defendants except R.W. Rhine and Seattle Goodwill Industries.

The consent decrees require the defendants to compensate the trustees for natural resource damages resulting from the release of hazardous substances at the Site. The trustees consist of the State of Washington Department of Ecology, the Tulalip Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of Interior. Under the consent decrees, the settling defendants will pay a total of $183,068 for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC. 20530, and should refer to *United States* v. *The Boeing Company, et al.*, DOJ Ref. #90–11–3–1412D.

The proposed consent decrees may be examined at the office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC. 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library. In requesting copies please refer to the referenced case, specify which decree or decrees you would like to receive, and enclose a check payable to the Consent Decree Library in the amount of $12.00 for the decree with Boeing, Kaiser, Safeway, Halffman and Washington Iron Works (48 pages), and/or $8.50 for the decree with Manson Construction Co., Inc. (34 pages) (25 cents per page reproduction costs).

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–29082 Filed 11–3–97; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 144–97]**

### Privacy Act of 1974; Modified Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following systems of records—previously published October 10, 1995 (60 FR 52698), and March 13, 1997 (62 FR 11920), respectively:

Deportable Alien Control System (DACS), Justice/INS–012

Computer Linked Application Information Management System (CLAIMS), Justice/INS–013

INS proposes to add one new routine use disclosure, identified as I., to Justice/INS–012, and seven routine uses disclosures to Justice/INS–013, identified as A. through G. The two systems of records are printed below.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on proposed new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the new routine uses.

Therefore, please submit any comments by December 4, 1997. The public, OMB, and the Congress are invited to send written comments to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 850, WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: October 21, 1997.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

**JUSTICE/INS–012**

**SYSTEM NAME:**

Deportable Alien Control System (DACS).

**SYSTEM LOCATION:**

Headquarters, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

*Aliens deported and alleged to be deportable by INS.*

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system is a computer data base that contains biographic information about deportable aliens such as name, date and country of birth; United States and foreign addresses; file number, charge, amount of bond, hearing date, case assignment, scheduling date, section(s) of law under which deportability/excludability is alleged; data collected to support the INS position on deportability/excludability, including information on any criminal or subversive activities; date, place, and type of last entry into the United States; attorney/representative's identification number; family data, and other case-related information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

8 U.S.C. 1103, 1251, and 1252.

**PURPOSE(S):**

The system provides INS with an automated data base which assists in the deportation or detention of aliens in accordance with immigration and nationality laws. It also serves as a docket and control system by providing management with information concerning the status and/or disposition of deportable aliens.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:**

Relevant information contained in this system of records may be disclosed as follows:

A. To clerks and judges of Federal courts exercising jurisdiction over the deportable aliens in determining grounds for deportation.

B. To other Federal, State, and local government law enforcement and regulatory agencies and foreign governments, including the Department of Defense and all components thereof, the Department of State, the Department of the Treasury, the Central Intelligence Agency, the Selective Service System, the United States Coast Guard, the United Nations, and INTERPOL, and individuals and organizations during the course of investigation in the processing of a matter or during a proceeding within the purview of the immigration and nationality laws to elicit information required by INS to carry out its functions and statutory mandates.

C. Where there is an indication of a violation or potential violation of law (whether civil, criminal or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

D. Where there is an indication of a violation or potential violation of the immigration and nationality laws, or of a general statute within INS jurisdiction or of a regulation, rule, or order issued pursuant thereto, to a court, magistrate, or administrative tribunal in the course of presenting evidence, and to opposing counsel during discovery.

E. Where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), to the appropriate foreign government agency charged with enforcing or implementing such laws and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

F. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

G. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

H. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

*I. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.*

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

These records are stored in a data base on magnetic disks.

**RETRIEVABILITY:**

These records are retrieved by name and/or date of birth, A-file number, or by alien's Bureau of Prisons number, when applicable.

**SAFEGUARDS:**

INS offices are located in buildings under security guard, and access to premises is by official identification. Access to terminals is limited to INS employees with user identification numbers. Access to records in this system is by restricted password and is further protected by secondary passwords.

**RETENTION AND DISPOSAL:**

Deportable alien case control and detention records are marked closed and retained for statistical purposes through the end of the fiscal year. Closed cases are archived and stored in the data base separate from the active cases. A retention and disposition schedule for the case summary and detention history records is currently being negotiated and will be submitted to the Archivist of the United States for approval.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Commissioner, Detention and Deportation, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

**NOTIFICAITON PROCEDURE:**

Address inquiries to the system manager identified above.

**RECORDS ACCESS PROCEDURE:**

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS office, or the INS office maintaining the desired records (if known) by using the list of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS–999, published in the **Federal Register**. Clearly mark the envelope and letter ''Privacy Act Request.'' Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the record, and a return address.

**CONTESTING RECORDS PROCEDURES:**

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope ''Privacy Act Request.'' The record must be identified in the same manner as described for making a request for access.

**RECORD SOURCE CATEGORIES:**

Basic information is obtained from ''The Immigration and Naturalization Service (INS) Alien File (A–File) and Central Index System (CIS), JUSTICE/

INS–001A.'' Information may also come from the alien, the alien's attorney/representative, INS official, other Federal, State, local, and foreign agencies and the courts.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**JUSTICE/INS–013**

**SYSTEM NAME:**

*Computer Linked Application Information Management System (CLAIMS)*

**SYSTEM LOCATION:**

Immigration and Naturalization Service (INS) Headquarters, Regional Service Centers, District Offices and sub-offices as detailed in Justice/INS–999.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have filed applications or petitions for benefits under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments with such applications or petitions; individuals who have paid fees for access to records under the Freedom of Information/Privacy Acts (FOIA/PA); individuals who have posted a bond and related fees with INS; and individuals who have refunded money to INS.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information *which* identifies individuals named above, e.g., name and address, date of birth, and alien registration number. Records in the system may also include such information as date documents were filed or received in INS, status, location of record, FOIA/PA or other control number when applicable, fee receipt data, and posted bond data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

8 U.S.C. 1103; 8 U.S.C. 1363; and 31 U.S.C. 3512.

**PURPOSE:**

This system will enable INS to determine the status of pending applications and petitions for benefits; to account for and control the receipt and disposition of any fees or refunds collected, including those which accompany applications, petitions, posted bonds, and FOIA/PA requests; and to locate related files and respond to inquiries about these records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES**

*A. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilies.*

*B. In a proceeding before a court or adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS or DOJ to be arguably relevant to the litigation: the DOJ, or any DOJ component or subdivision thereof; any DOJ employee in his/her official capacity; any DOJ employee in his/her individual capacity where the DOJ has agreed to represent the employee; or the United States where INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.*

*C. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.*

*D. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.*

*E. To a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.*

*F. To General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 3906.*

*G. To an obligor who has posted a bond with the INS for the subject. INS may provide only such information, (e.g. address), as may aid the obligor in locating the subject to insure his or her presence when required by INS.*

**POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information is stored on magnetic disks and tape.

**RETRIEVABILITY:**

Records may be retrieved by the name of the individuals covered by the system; and by fee receipt number.

**SAFEGUARDS:**

Records are safeguarded in accordance with Department of Justice rules and procedures. INS offices are located in buildings under security guard, and access to premises is by official identification. Offices are locked during non-duty hours. Access to this system is obtained through remote terminals which require the use of restricted passwords and a user ID.

**RETENTION AND DISPOSAL:**

Records are archived off-line for an indefinite period one year after the final action. A disposition schedule for archived records is pending.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Service Center Operation, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

**NOTIFICATION PROCEDURE:**

Inquiries should be addressed to the system manager.

**RECORD ACCESS PROCEDURE:**

Make all requests for access in writing to the FOIA/PA Officer at any INS office. Clearly mark the envelope and letter ''Privacy Act Request.'' Depending on the type of record, provide the name and date of birth of the applicant, name of petitioner or FOIA/PA requester, alien registration number of beneficiary and receipt number to assist in locating and/or verifying the identify of the record. For your convenience, INS Form G–639, Freedom of Information Act Privacy Act Request, may be obtained from the nearest INS office and used to submit a request.

**CONTESTING RECORDS PROCEDURE:**

Direct all requests to contest or amend information to the FOIA/PA Officer at any INS office. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope ''Privacy Act Amendment Request.'' The record must be identified in the same manner as described for making a request for access.

**RECORD SOURCE CATEGORIES:**

Information contained in this system of records is obtained from the individuals covered by the system.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 97–29080 Filed 11–3–97; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 143–97]**

### Privacy Act of 1974; Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, is removing Subsystem B., entitled ''Alien Enemy Index and Records System,'' from its Immigration and Naturalization Service Index System, Justice/INS–001.'' (Justice/INS–001 was most recently published on October 5, 1993 (58 FR 51847).)

Subsystem B. is being removed because these records have been accepted by the National Archives and Records Administration (NARA) for permanent retention pursuant to 5 U.S.C. 552a(1)(3) of the Privacy Act. On July 11, 1996 (61 FR 36573), NARA published notice of these records pursuant to 5 U.S.C. 552a(e)(4)(A) through (G). The former INS records are identified in that notice as System No. 11 and are part of NARA's ''Group 85.'' Any requests for access to these records should now be directed to NARA.

Dated: October 15, 1997.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

[FR Doc. 97–29081 Filed 11–3–97; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 18, 1997, Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of cocaine (9041) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture a cocaine derivative which is an intermediate for the production of dopascan injection. Cocaine derivatives are Schedule II controlled substances in the cocaine basic class.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, *Attention:* DEA Federal Register Representative (CCR), and must be filed no later than January 5, 1997.

Dated: October 22, 1997.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 97–29062 Filed 11–3–97; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 1775–96; AG Order No. 2124–97]**

**RIN 1115–AE26**

### Designation of Burundi Under Temporary Protected Status

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** Under section 244 of the Immigration and Nationality Act, as amended, (the Act), the Attorney General is authorized to grant Temporary Protected Status (TPS) in the United States to eligible nationals of designated foreign states (and to eligible aliens who have no nationality and who last habitually resided in a designated state) upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. This notice designates Burundi for TPS pursuant to section 244(b)(1) of the Act.

**EFFECTIVE DATES:** This designation is effective on November 4, 1997 and will remain in effect until November 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

**SUPPLEMENTARY INFORMATION:**

Burundians desiring safe haven in the United States should apply for Temporary Protected Status during the initial registration period being announced now, unless they would be eligible for late initial registration under 8 CFR 244.2(f)(2) (formerly § 240.2(f)(2)) and they choose to wait. This recommendation applies to any Burundian who has already applied for, or plans to apply for, asylum but whose asylum application has not yet been approved.

An application for Temporary Protected Status does not preclude or adversely affect an application for asylum or any other immigration benefit. Burundians who apply for TPS during the initial registration period will remain eligible to re-register if the designation of TPS is extended, even if an application for asylum or another immigration benefit is denied. However, without a TPS application during the initial registration period, only those Burundians who satisfy the requirements for late initial registration under 8 CFR 244.2(f)(2) (formerly § 240.2(f)(2)) would be eligible for TPS registration during any extension of designation.

Burundians who already have employment authorization, including some asylum applicants, and Burundians who have no need for employment authorization, including minor children, may register for TPS by filing an Application for Temporary Protected Status, Form I–821, which requires a filing fee. The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. The appropriate filing fee must accompany Form I–765, unless a properly documented fee waiver request is submitted under 8 CFR 244.20 (formerly § 240.20) to the Immigration and Naturalization Service or the applicant does not request employment authorization.

### Notice of Designation of Burundi Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C.A. 1254 (West Supp. 1997)), I find, after consultation with the appropriate agencies of the Government, that:

(1) There exists an ongoing armed conflict in Burundi and a return of aliens who are nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) would pose a serious threat to their personal safety as a result of the armed conflict in that nation;

There exist extraordinary and temporary conditions in Burundi that prevent aliens who are nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) from returning to Burundi in safety; and

(3) Permitting nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) to remain temporarily in the United States is not contrary to the national interest of the United States.

Accordingly, it is ordered as follows:

(1) Burundi is designated under sections 244(b)(1)(A) and (C) of the Act. Nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who have been ''continuously physically present'' and have ''continuously resided in the United States'' since November 4, 1997 may apply for Temporary Protected Status within the registration period which begins on November 4, 1997 and ends on November 3, 1998.

(2) I estimate that there are no more than 500 nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) who are currently in nonimmigrant or unlawful status and therefore eligible for Temporary Protected Status.

(3) Except as specificially provided in this notice, applications for TPS by nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) must be filed pursuant to the provisions of 8 CFR part 244. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on November 4, 1997 and will remain in effect until November 3, 1998.

(4) A fee of fifty dollars ($50) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1), which is currently seventy dollars ($70), will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization. An alien who does not request employment authorization must nevertheless file Form I–765, together with Form I–821, for informational purposes, but in such cases Form I–765 will be without fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 3, 1998, the designation of Burundi under the TPS program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TPS shall only be allowed pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the TPS program for nationals of Burundi (and aliens having no nationality who last habitually resided in Burundi) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: October 28, 1997.

**Janet Reno,**

*Attorney General.*

[FR Doc. 97–29079 Filed 11–3–97; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 1877–97; AG Order No. 2125–97]**

**RIN 1115–AE26**

### Designation of Sierra Leone Under Temporary Protected Status

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** Under section 244 of the Immigration and Nationality Act, as amended, (the Act), the Attorney General is authorized to grant Temporary Protected Status (TPS) in the United States to eligible nationals of designated foreign states (or to eligible aliens who have no nationality and who last habitually resided in a designated state) upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. This notice designates Sierra Leone for TPS pursuant to section 244(b)(1) of the Act.

**EFFECTIVE DATES:** This designation is effective on November 4, 1997 and will remain in effect until November 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

**SUPPLEMENTARY INFORMATION:** Sierra Leoneans who wish to remain in the United States under Temporary Protected Status should apply during the initial registration period announced in this notice, unless they would be eligible for late initial registration under 8 CFR 244.2(f)(2) (formerly § 240.2(f)(2)) and they choose to wait. This recommendation applies to any Sierra Leonean who has already applied for, or plans to apply for, asylum but whose asylum application has not yet been approved.

An application for Temporary Protected Status does not preclude or adversely affect an application for asylum or any other immigration benefit. Sierra Leoneans who apply for TPS during the initial registration period will remain eligible to re-register if the designation of TPS is extended, even if an application for asylum or another immigration benefit is denied. However, without a TPS application during the initial registration period, only those Sierra Leoneans who satisfy the requirements for late initial registration under 8 CFR 244.2(f)(2) (formerly § 240.2(f)(2)) would be eligible for TPS registration during any extension of this designation.

Sierra Leoneans who already have employment authorization, including some asylum applicants, and Sierra Leoneans who have no need for employment authorization, including minor children, may register for TPS by filing an Application for Temporary Protected Status, Form I–821, which requires a filing fee. The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. The appropriate filing fee must accompany Form I–765, unless a properly documented fee waiver request is submitted under 8 CFR 244.20 (formerly § 240.20) to the Immigration and Naturalization Service or the applicant does not wish to obtain employment authorization.

**Notice of Designation of Sierra Leone Under Temporary Protected Status Program**

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C.A. 1254 (West Supp. 1997)), I find, after consultation with the appropriate agencies of the Government, that:

(1) There exists an ongoing armed conflict in Sierra Leone and a return of aliens who are nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) would pose a serious threat to their personal safety as a result of the armed conflict in that nation;

(2) There exist extraordinary and temporary conditions in Sierra Leone that prevent aliens who are nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) from returning to Sierra Leone in safety; and

(3) Permitting nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra

Leone) to remain temporarily in the United States is not contrary to the national interest of the United States.

Accordingly, it is ordered as follows:

(1) Sierra Leone is designated under sections 244(b)(1) (A) and (C) of the Act. Nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been ''continuously physically present'' and have ''continuously resided in the United States'' since November 4, 1997 may apply for Temporary Protected Status within the registration period which begins on November 4, 1997.

(2) I estimate that there are no more than 4,000 nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who are currently in nonimmigrant or unlawful status and therefore eligible for Temporary Protected Status.

(3) Applications for TPS by nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) must be filed pursuant to the provisions of 8 CFR part 244. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on November 4, 1997 and will remain in effect until November 13, 1998.

(4) A fee of fifty dollars ($50) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1), which is currently seventy dollars ($70), will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization. An alien who does not request employment authorization must nevertheless file Form I–765, together with Form I–821, for informational purposes, but in such cases Form I–765 will be without fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 3, 1998, the designation of Sierra Leone under the TPS program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register.** If there is an extension of designation, late initial registration for TPS shall only be allowed pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the TPS program for nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: October 28, 1997.

**Janet Reno,**

*Attorney General.*

[FR Doc. 97–29078 Filed 11–3–97; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 1780–97; AG Order No. 2126–97]**

**RIN 1115–AE26**

### Designation of Sudan Under Temporary Protected Status

**AGENCY:** Immigration and Naturalization Service, Justice

**ACTION:** Notice.

**SUMMARY:** Under section 244 of the Immigration and Naturalization Service, as amended, (the Act), the Attorney General is authorized to grant Temporary Protected Status (TPS) in the United States to eligible nationals of designated foreign states (or to eligible aliens who have no nationality and who last habitually resided in a designated state) upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. This notice designates Sudan for TPS pursuant to section 244(b)(1) of the Act.

**EFFECTIVE DATES:** This designation is effective on November 4, 1997. and will remain in effect until November 3, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 5t14–5014.

**SUPPLEMENTARY INFORMATION:** Sudanese desiring safe haven in the United States should apply for Temporary Protected Status during the initial registration period being announced now, unless they would be eligible for late initial registration under 8 CFR 244.2(f)(2) (formerly § 240.2(f)(2)) and they choose to wait. This recommendation applies to any Sudanese who has already applied for, or plans to apply for, asylum but whose asylum application has not yet been approved.

An application for Temporary Protected Status does not preclude or adversely affect an application for asylum or any other immigration benefit. Sudanese who apply for TPS during the initial registration period will remain eligible to re-register if the designation of TPS is extended, even if an application for asylum or another immigration benefit is denied. However, without a TPS application during the initial registration period, only those Sudanese who satisfy the requirements for late initial registration under 8 CFR 244.2(f)(2) (formerly § 240.2(f)(2)) would be eligible for TPS registration during any extension of designation.

Sudanese who already have employment authorization, including some asylum applicants, and Sudanese who have no need for employment authorization, including minor children, may register for TPS by filing a Application for Temporary Protected Status, Form I–821, which requires a filing fee. The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. The appropriate filing fee must accompany Form I–765, unless a properly documented fee waiver request is submitted under 8 CFR 244.20 (formerly § 240.20) to the Immigration and Naturalization Service or the applicant does not wish to obtain employment authorization.

**Notice of designation of Sudan Under Temporary Protected Status Program**

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C.A. 1254 (West Supp. 1997)), I find, after consultation with the appropriate agencies of the Government, that:

(1) There exists an ongoing armed conflict in Sudan and a return of aliens who are nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) would pose a serious threat to their personal safety as a result of the armed conflict in that nation;

(2) There exist extraordinary and temporary conditions in Sudan that prevent aliens who are nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) from returning the Sudan in Safety; and

(3) Permitting nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) to remain temporarily in the United States is not contrary to the national interest of the United States.

Accordingly, it is ordered as follows:

(1) Sudan is designated under sections 244(b)(1) (A) and (C) of the Act. Nationals of Sudan (and aliens having

no nationality who last habitually resided in Sudan) who have been ''continuously physically present'' and have ''continuously resided in the United States'' since November 4, 1997 may apply for Temporary Protected Status within the registration period which begins on November 4, 1997 and ends on November 3, 1998.

(2) I estimate that there are no more than 4,000 nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) who are currently in nonimmigrant or unlawful status and therefore eligible for Temporary Protected Status.

(3) Except as specifically provided in this notice, applications for TPS by nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) must be filed pursuant to the provisions of 8 CFR part 244. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on November 4, 1997 and will remain in effect until November 3, 1998.

(4) A fee of fifty dollars ($50) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1), which is currently seventy dollars ($70), will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization. An alien who does not request employment authorization must nevertheless file Form I–765, together with Form I–821, for informational purposes, but in such cases Form I–765 will be without fee.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before November 3, 1998, the designation of Sudan under the TPS program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register.** If there is an extension of designation, late initial registration for TPS shall only be allowed pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the TPS program for nationals of Sudan (and aliens having no nationality who last habitually resided in Sudan) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: October 28, 1997.

**Janet Reno,**

*Attorney General.*

[FR Doc. 97–29077 Filed 11–3–97; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

October 29, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley (202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDd) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday—Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and budget, room 10235, Washington, DC 20503 (202) 395–7316), on or before December 4, 1997.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency: Employment and Training Administration.*

*Title*: Labor Condition Application for H–1B Nommigrants.

*OMB Number*: 1205–0310 (extension).

*Frequency*: Other.

*Affected Public*: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government; Federal Government.

*Number of Respondents*: 200,000.

*Estimated Time Per Respondent*: 1 hour 15 minutes.

*Total Burden Hours*: 200,500.

*Total Annualized capital/startup costs*: -0-.

*Total annual costs (operating/maintaining systems or purchasing services)*: -0-.

*Description*: The application form and other requirements in these regulations for employers seeking to use H–1B nonimmigrants in speciality occupations and as fashion models will permit the Department of Labor to meet its statutory responsibilities for program administration, management, and oversight.

*Agency: Employment Standards Administration.*

*Title*: OFCCP Recordkeeping/Reporting: Construction.

*OMB Number*: 1215–0163 (extension).

*Frequency*: Quarterly.

*Affected Public*: Business or other for-profit; Not-for-profit institutions.

*Number of Respondents*: 100,000.

*Estimated Time Per Respondent*: 46.70 hours.

*Total Burden Hours*: 4,842,187.

*Total Annualized capital/startup costs*: -0-.

*Total annual costs (operating/maintaining systems or purchasing services)*: -0-.

*Description*: Recordkeeping and reporting by Federal and federally-assisted construction contractors and subcontractors is necessary to substantiate their compliance with nondiscrimination and affirmative action contractual obligations.

*Agency: Departmental Management.*

*Title*: Applicant Background Survey.

*OMB Number*: 1225–0000 (new collection).

*Frequency*: On occasion.

*Affected Public*: Individuals or households; Federal Government.

*Number of Respondents*: 5,000.

*Estimated time Per Respondent*: 5 minutes.

*Total Burden Hours*: 417.

*Total Annualized capital/startup costs*: -0-.

*Total annual costs (operating/maintaining systems or purchasing services)*: -0-.

*Description*: This voluntary survey will provide information on the

applicants' gender, race or ethnicity, disability, and the applicants' source of information on the job vacancy. This data will be used to evaluate the effectiveness of various recruitment methods employed by the Department of Labor and to tailor recruitment to meet equal employment opportunity objectives, by ensuring a diverse pool of applicants.

**Theresa M. O'Malley,**

*Departmental Clearance Officer.*

[FR Doc. 97–29164 Filed 11–3–97; 8:45 am]

BILLING CODE 4510–30M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(a)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments on the survey that has been developed to collect customer satisfaction information from service delivery areas who operate Summer Youth Employment and Training Programs.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before January 5, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** LaSharn Youngblood, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; Telephone (202) 219–7533 ext. 167 (this is not a toll-free number); internet address—youngbloodl@doleta.gov; fax number (202) 219–7190.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Under the Job Training Partnership Act Program, title IIB, the Department of Labor has established the Summer Youth Employment and Training Program to: (1) Enhance the basic education skills of youth; (2) encourage school completion or enrollment in supplementary or alternative school programs; provide eligible youth with exposure to the world of work; and (3) enhance the citizenship skills of youth. The Department of Labor is responsible for overseeing these programs. As a part of the Department's oversight responsibilities, ETA will conduct a uniform survey of a representative sample of service delivery areas (ADA's) to determine how the Department can effectively measure customer satisfaction. The result of this survey will be used to assist in the development of a comprehensive system for assessing customer satisfaction with the summer program.

#### II. Current Actions

ETA has revised its monitoring instrument to collect more information on customer satisfaction. This data will be used to determine satisfaction experiences of program participants, work site supervisors/employers and educational instructors. The information obtained will permit the Department to fulfill requests from the U.S. Congress, the Administration, the media and the public.

*Type of Review:* New.

*Agency:* Employment and Training Administration, U.S. Department of Labor.

*Title:* Summer Youth Employment and Training Program.

*OMB Number:* 1205–XXXX.

*Recordkeeping:* 0.

*Affected Public:* SDA's.

*Cite/Reference/Form/etc.:* Monitoring.

*Total Respondents:* 64.

*Frequency:* one time.

*Total Responses:* 64.

*Average Time per Response:* 45 minutes per response.

*Estimated Total Burden Hours:* 29.

*Total Burden Cost (operating/maintaining):* $580.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management And Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 28, 1997.

**Charles L. Atkinson,**

*Deputy Administrator, Office of Job Training Programs.*

[FR Doc. 97–29162 Filed 11–3–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the information collection: Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlements, Form CA–1032. Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the

**ADDRESSES** section below on or before January 5, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of response.

**ADDRESSES:** Contact Ms. Margaret Sherrill at the U. S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 219–7601. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Federal Employees' Compensation Act (FECA) provides for the collection of information from claimants, receiving continuing compensation on the periodic disability rolls. The FECA states the following: Compensation must be adjusted to reflect a claimant's earning while in receipt of benefits (5 U.S.C. 8106); Compensation is payable at the augmented rate of 75 percent only if the claimant has one or more dependents (5 U.S.C. 8110); Compensation may not be paid concurrently with certain benefits from other Federal agencies, e.g., Social Security (5 U.S.C. 8116); and, Compensation must be adjusted to reflect any settlement from a third party responsible for the injury for which the claimant is being paid compensation (5 U.S.C. 8132). Completion of Form CA–1032 is requested annually and is used to ensure that compensation being paid on the periodic roll is correct.

### II. Current Actions

The Department of labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to meet the statutory requirements of FECA to obtain information for determining claimants' entitlement to ongoing compensation. The information on Form CA–1032 enables the Director, Office of Worker's Compensation Programs to ensure that the correct compensation is being paid to claimants on the periodic roll.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlements.

*OMB Number:* 1215–0151.

*Agency Numbers:* CA–1032.

*Affected Public:* Individuals or households.

*Total Respondents:* 50,000.

*Frequency:* Annually.

*Total Responses:* 50,000.

*Average Time Per Response for Reporting:* 20 minutes.

*Estimated Total Burden Hours:* 16,667.

*Total Burden Cost (capital/startup):* 0.

*Total Burden Cost (Operating/maintenance):* 95,163.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 28, 1997.

**Cecily A. Rayburn,**

*Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 97–29163 Filed 11–3–97; 8:45 am]

**BILLING CODE 4510–27–M**

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## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

**[Application No. D–10471, et al.]**

## Proposed Exemptions; First Bank System Personal Retirement Account (the Plan)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of

proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**First Bank System, Personal Retirement Account (the Plan), Located in Minneapolis, Minnesota**

[Application No. D–10471]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. part 2570, subpart B (55 F.R. 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed contribution to the Plan by U.S. Bancorp (the Employer), formerly First Bank System, Inc., the sponsor of the Plan, of the Employer's interests in two limited partnership funds (the Interests) organized and managed by Kohlberg Kravis Roberts & Co. (KKR); and (2) the grant by the Employer to the Plan of an option (the Put) under which the Plan is empowered at any time to require the Employer to repurchase the Interests from the Plan at any time; provided that the following conditions are satisfied:

(a) The Interests are valued at their fair market value as of the date of contribution by a qualified, independent appraiser;

(b) The sum of the fair market value of the Interests plus the fair market value of any other KKR-related investments held by the Plan does not exceed ten percent of the fair market value of the Plan's total assets at the time of the contribution of the Interests to the Plan;

(c) The Plan is represented for all purposes with respect to the Interests by a qualified independent fiduciary (the Fiduciary), as described below, for the duration of the Plan's holding of any of the Interests;

(d) The Fiduciary takes whatever action is necessary, as determined by the Fiduciary in its sole discretion, to enforce the conditions of this exemption and to protect the Plan's investment in the Interests, including, but not limited to the exercise of the Put;

(e) The Fiduciary retains the right under the Put to require the Employer, at any time, to purchase some or all of the Interests from the Plan for the greater of (1) the Interests' fair market value as of the contribution date, or (2) the fair market value of the Interests as of the date of such sale pursuant to the Put; and

(f) For the duration of the Plan's investment in the Interests, the Employer's obligations under the Put are secured by the Collateral (as described below) in escrow representing no less than one third of the fair market value of the Interests at the time of their contribution to the Plan, and the Fiduciary requires additional Collateral to be deposited in the escrow whenever the value of the Interests increases.

**Summary of Facts and Representations**

1. The Plan is a defined benefit pension plan with approximately 21,000 participants and assets of approximately $382,392,832 as of June 30, 1997. The Plan is sponsored by the Employer, which was known as First Bank System, Inc. until August 1, 1997. The Employer is a Delaware public corporation functioning as a bank holding company with banks, brokerage, insurance, and credit card operations conducted through subsidiaries in 14 states. Numerous corporate subsidiaries of the Employer are also sponsors of the Plan. The trustee of the Plan is the First Trust National Association (the Trustee), a wholly-owned subsidiary of the Employer. Under the Plan document, the Employer has the authority, directly or through a committee of appointed officers of the Employer, to determine investment policy of the Plan and to appoint investment managers. The investment manager of the assets of the Plan is First Asset Management, a division of a wholly-owned subsidiary of the Employer.

2. The Employer currently has investments in two investment funds (the KKR Funds) sponsored and managed by KKR designated as the Kohlberg Kravis Roberts and Co. 1986 Fund and the Kohlberg Kravis Roberts and Co. 1987 Fund. KKR, established in 1976, serves as manager and general partner, as well as management and planning services provider, for investment enterprises and limited partnerships, including the KKR Funds which are the subject of this proposed exemption. Each of the KKR Funds invests in, and consists solely of, holdings in five businesses which are publicly-traded and three business which are privately held. The Employer represents that its investments in the Interests were acquired by the Employer over time for general investment purposes. The Interests are not publicly traded. The Employer represents that the Interests have increased in value substantially since acquisition by the Employer, and the Employer represents that continued increases in value are expected. The Employer represents that investors in the KKR Funds include individuals, institutions and employee benefit plans. Because the Interests have proven to be favorable investments with likely future increases in value and continued favorable performance, the Employer desires to contribute the Interests to the Plan. Accordingly, the Employer proposes to contribute the Interests to the Plan and is requesting an exemption to permit such contribution transaction under the terms and conditions described herein.

3. The Employer proposes to contribute the Interests to the Plan at their fair market value as of the date of the contribution transaction and to grant the Plan the Put, an option empowering the Plan to require the Employer to purchase the Interests back from the Plan in the event such repurchase is directed by the independent fiduciary, discussed below, which represents the Plan's interests with respect to the Interests. The fair market value of the Interests upon their contribution to the Plan will be determined by Piper Jaffray Inc. (the Appraiser), an independent investment banking services provider located in Minneapolis, Minnesota engaged in, among other activities, the valuation of securities. The Appraiser represents that as of September 3, 1997, the Interests had a fair market value of $25.5 million. The Employer represents that the Plan does not yet own any interests in either of the KKR Funds, although the Plan does own interests in two other entities of which KKR is either the general partner or an investment advisor.[1] The Employer represents that the total fair market value of the Plan's interests in these other KKR-related enterprises was $6.2 million as of the most recent valuation of Plan assets on June 30, 1997.

4. The Put, which has already been executed by the Employer, enables the Plan, represented by the Fiduciary (discussed below), to sell the Interests back to the Employer at any time. The Put requires the Employer, upon notification by the Fiduciary, to purchase all or any portion of the Interests from the Plan as directed by the Fiduciary for a purchase price to be

[1] The Employer represents that the other KKR-related investments held by the Plan consist of interests in a limited partnership designated as Union Texas-UTH and another limited partnership designated as Auto Zone Pittco Assoc. Ltd.

the greater of (a) the fair market value of such portion of the Interests as of the date of its initial contribution to the Plan, as determined by the Appraiser, or (b) the fair market value of such portion of the Interests as of the date of the exercise of the Put as determined by the mutual agreement of the Fiduciary and the Employer or, if the Fiduciary and Employer are unable to agree, as determined by an appraiser selected by the Fiduciary. Under the terms of the Put, the Employer grants the Plan a first security interest in collateral in escrow which secures the Employer's obligations under the Put. The Collateral consists of debt obligations of the United States having an initial fair market value of not less than one third of the fair market value of the Interests upon their contribution to the Plan. The Put requires the escrow agent to execute such other instruments and perform such acts as the Fiduciary may reasonably request to establish and maintain the Plan's security interest in the Collateral.

5. The interests of the Plan and its participants and beneficiaries with respect to the proposed contribution transaction, including the Put, are represented by the Fiduciary, which is the First State Bank of Bayport. The Fiduciary is a Minnesota state-chartered bank which represents itself to be independent of and unrelated to the Employer. The Fiduciary will oversee and monitor the Plan's investment in the Interests and the Plan's rights under the Put for the duration of the Plan's investment in the Interests. The Fiduciary will require an appraisal of the Interests for their fair market value by the Appraiser upon their contribution to the Plan, and will continue to require annual valuations of the Interests as long as the Plan remains invested in the Interests or any portion thereof. The Fiduciary will ensure that the Collateral required to secure the Employer's obligations under the Put is deposited in escrow in the appropriate amount, and the Fiduciary will require additional collateral to be deposited in the escrow from time to time if the value of the Interests increases. The Fiduciary represents that it has reviewed and evaluated the proposed contribution of the Interests to the Plan, including the terms of the Put, and has determined that the Plan's acquisition of the Interests by the Employer's contribution would be prudent and would add diversification to the Plan's assets. The Fiduciary states that due to the Put, the Plan will have little or no investment risk with respect to the Interests while the Interests offer the potential for considerable gain. The Fiduciary states that the contribution of the Interests to the Plan will comply with the Plan's investment objectives and policies and would not adversely affect the Plan's liquidity needs with respect to current and projected benefit obligations. The Fiduciary concludes that the contribution of the Interests to the Plan will be in the best interests and protective of the participants and beneficiaries of the Plan. The Fiduciary states that its duties with respect to the Plan's investment in the Interests include ongoing monitoring of the investment performance of the KKR Funds in comparison to performance of other investment alternatives to determine if continued investment in the Interests by the Plan is warranted, and to ensure that the investment objectives and strategies of the KKR Funds remain consistent with the needs of the Plan. The Fiduciary also states that it will continue to review the Plan's liquidity needs to determine they are consistent with continued investment in the Interests. The Fiduciary represents that if, at any time, it determines that the Interests constitute an inappropriate investment for the Plan, it will exercise the Put in order to protect the Plan's participants and beneficiaries from adverse affects.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons:

(a) The Plan's investment in the Interests will be protected by the Put, which will require the Employer to purchase the Interests from the Plan at any time for a price of no less than the greater of the fair market value of the Interests upon exercise of the Put or the fair market value of the Interests at the time of their contribution to the Plan;

(b) The Employer's obligations under the Put will be secured by the Collateral, consisting of debt obligations of the United States having an initial fair market value of not less than one third of the fair market value of the Interests upon their contribution to the Plan;

(c) The interests of the Plan with respect to the contribution of the Interests and under the terms of the Put will be represented by an independent fiduciary who will require annual valuations of the Interests and additional deposits of Collateral by the Employer whenever the value of the Interests increases; and

(d) After an evaluation of the proposed transactions, the Fiduciary has determined that the Plan's investment in the Interests, protected by the Put, will be in the best interests and protective of the participants and beneficiaries of the Plan.

**FOR FURTHER INFORMATION CONTACT:** Ron Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Profit Sharing Keogh Plan of Richard D. Wickerham, Esq. (the Plan) Located in Schenectady, New York**

[Application No. D–10505]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) Two proposed loans (the Loans) totaling $50,000 by the Plan to Mr. Richard D. Wickerham (Mr. Wickerham), a disqualified person with respect to the Plan, and (2) the personal guarantee of the Loans by Mr. Wickerham, provided the following conditions are satisfied: (a) The terms of the Loans are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party; (b) the Loans do not exceed 25% of the assets of the Plan; (c) the first Loan (Loan 1) is secured by a second mortgage on certain real property (the Property) which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the amount of Loan 1 plus the balance of the first mortgage which it secures; (d) the second Loan (Loan 2) is secured by certain personal property (the Personalty) which has a fair market value, as determined by a qualified independent appraiser, of not less than 200% of Loan 2; (e) the fair market value of the collateral remains at least equal to the percentages described in conditions (c) and (d), above, throughout the duration of the Loans; and (f) Mr. Wickerham is the only Plan participant to be affected by the Loan transactions.[2]

**Summary of Facts and Representations**

1. Richard D. Wickerham, Attorney and Counsellor at Law (the Firm), is a law firm located in Schenectady, New York. The Plan is a defined contribution

[2] Since Mr. Wickerham is the sole owner of the Plan sponsor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

plan with one participant, Mr. Wickerham, who is also the Plan's trustee. Mr. Wickerham is also the sole owner of the Firm. As of July 31, 1997, the fair market value of the assets in the Plan was approximately $343,088.

2. Mr. Wickerham wishes to borrow $50,000 from the Plan, which represents approximately 15% of the current fair market value of the Plan. The money will be loaned to Mr. Wickerham in two separate Loans. The Loans will each be amortized over a 5 year period, with equal monthly payments of principal and interest over the 5 year term. The interest rate for each Loan will be 9.5% per annum. The total monthly payments for the Loans will be $1,050.10 per month. Mr. Anthony J. Lanzillo, Vice President of KeyBank (the Bank) of Clifton Park, New York, has represented in a letter dated October 1, 1997 that the Bank would lend money to Mr. Wickerham at the same terms as those of the Loans.

3. Loan 1 will be secured by the Property, which consists of Mr. and Mrs. Wickerham's residence, which is located at 6 Delaware Bay Drive, Villas, Cape May County, New Jersey. The Property has been appraised by Ms. Dolores K. Lanzalotti of Jersey Cape Realty, Inc., an independent real estate broker in Cape May, New Jersey, to have a fair market value of $140,000 as of August 9, 1997. The Property has a first mortgage in the amount of $75,986. Loan 1 would be secured by a second mortgage on the Property in the amount of $17,000. Thus, the appraised fair market value of the Property would represent not less than 150% of the total outstanding principal amount of debt secured by the Property. The applicant represents that the mortgage to the Plan will be duly recorded in the Office of the County Clerk, Cape May County, New Jersey.

4. Loan 2, which will be in the principal amount of $33,000, will be secured by the Personalty. The Personalty consists of eighteenth century antique period furniture and artifacts which are owned by Mr. and Mrs. Wickerham. The Personalty has been appraised by Ms. Ona Curran, AAA, Certified Appraiser of Personal Property, an independent appraiser in Esperance, New York, as having a fair market value of $69,190 as of August 1, 1997. This amount represents approximately 210% of the principal amount of Loan 2. The applicant represents that the Plan's security interest in the Personalty will be duly recorded in the appropriate County Clerk office.

5. Mr. Wickerham represents that in addition to the collateral described above, he will also be giving his personal guarantee for each of the Loans. Mr. Wickerham further states that should the collateral-to-loan ratio described above for either Loan fall below the described percentages, he will add additional collateral such that the 150% ratio will be maintained for Loan 1 and the 200% ratio will be maintained for Loan 2 throughout the five year period of the Loans.

6. In summary, the applicant represents that the proposed transactions satisfy the criteria contained in section 4975(c)(2) of the Code for the following reasons: (a) The Loans represent approximately 15% of the assets of the Plan; (b) the terms of the Loans will be at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party, as demonstrated by the letter from the Bank; (c) Loan 1 will be secured by a second mortgage on the Property, which has been determined by a qualified, independent appraiser to have a fair market value of not less than 150% of the total principal amount of the loans that it will secure; (d) Loan 2 will be secured by the Personalty, which consists of eighteenth century antique period furniture and artifacts with a current fair market value of approximately 210% of Loan 2, as determined by a qualified, independent appraiser; and (e) Mr. Wickerham is the only participant in the Plan to be affected by the transactions, and he desires that the transactions be consummated.

**Notice to Interested Persons**

Since Mr. Wickerham is the only Plan participant to be affected by the proposed transactions, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due within 30 days from the date of publication of this notice of proposed exemption in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 30th day of October, 1997.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 97–29174 Filed 11–3–97; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF LABOR

## Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 97–60; Exemption Application No. D–10319]**

## Grant of Individual Exemptions; TCW Group, Inc., Trust Company of the West, TCW Funds Management, Inc., TCW Galileo Funds, (Collectively; TCW)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### TCW Group, Inc., Trust Company of the West, TCW Funds Management, Inc., TCW Galileo Funds, Inc. (Collectively; TCW), Located in Los Angeles, California

[Prohibited Transaction Exemption 97–60; Exemption Application No. D–10319]

### Exemption

*Section I. Covered Transactions*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(l)(A) through (D) of the Code, shall not apply to the acquisition or redemption of units (the Units) in the TCW Life Cycle Trusts (the Trusts, as defined in Section III) by individual account plans described in section 3(34) of the Act (the Plans), including Plans sponsored by TCW, in connection with such Plans' participation in the TCW Portfolio Solutions Program (the Program), and the acquisition or redemption of shares (the Shares) in the TCW Galileo Funds (the Funds, as defined in Section III) by the Trusts.

In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply to the receipt of fees by TCW as a result of the provision of advice in connection with the investment by the Plans in the Trusts, a Money Market Fund, a Guaranteed Investment Contract (GIC) or similar investment vehicle, under the Program.

This exemption is subject to the following conditions set forth below in Section II.

*Section II. General Conditions*

A. The terms of each purchase or redemption of the Units in the Trusts are at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

B. The participation of a Plan in the Program will be expressly authorized in writing by a fiduciary of the Plan who is independent of TCW.[1] With respect to the Plans sponsored by TCW, this condition will be deemed satisfied for purposes of the purchase or redemption of Units in the Trusts, if the purchase and redemption of Shares in the Funds by the Trusts meets the conditions of Prohibited Transaction Exemption (PTE) 77–3 (42 FR 18743, April 8, 1977).

C. Participation in the Program will be limited to Plans which have a minimum of $5,000,000 in plan assets as of the end of the most recent plan year.

D. No Plan will pay a fee or commission by reason of the acquisition or redemption of Units in the Trusts or Shares in the Funds.

E. The price paid or received by the Plans for the Units in the Trusts is the ''net asset value'' per Unit, at the time of the transaction. The Trusts will buy and sell shares in the Funds on the same basis as other shareholders.

F. The total fees paid to TCW and its affiliates by each Plan for the provision of services in connection with its investment in the Units of the Trusts under the Program does not exceed ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act. In this regard, the total amount paid by a Trust to TCW or unaffiliated third persons for services necessary to operate the Trusts, and for TCW to provide what may be considered investment advice, will not exceed 1% per annum of the average daily ''net asset value'' of the shares of the Funds and cash held by such Trust.

G. TCW will not receive any fees from the Plans whose participants (the Participants) receive recommendations concerning investment in a Trust, nor from the Trusts in which the Plans invest. Notwithstanding the foregoing, TCW will not be precluded from receiving: (i) fees from the Funds which are paid by other investors in the Funds, and which are permissible under the Investment Company Act of 1940, as amended (the 1940 Act); (ii) reimbursement for ''direct expenses'' within the meaning of 29 CFR 2550.408c–2 in connection with the operation of the Program; or (iii) reimbursement for direct expenses which TCW pays to unaffiliated third persons for goods and services provided to the Trusts and/or Plans under the Program.

H. Any investment advice given to the Participants by TCW under the Program will be based on the responses provided by the Participants to worksheet questions which are developed and designed by an independent financial expert (the Financial Expert, as defined in Section III (F)) and the independent behavioral expert (the Behavioral Expert as defined in Section III (G), collectively; the Experts).

[1] In the case of a Plan sponsored by TCW, such fiduciary need not be independent of TCW.

I. Any investment advice given to the Participant will be implemented only at the express direction of the Participant.

J. Under the Program, TCW will give investment advice to the Participants that is limited to the Trusts, a Money Market Fund, a GIC or a similar investment vehicle that may or may not be affiliated with TCW.[2]

K. The compensation of neither Expert is affected by the decisions made by the participants and beneficiaries regarding investment of the assets of their accounts among the Trusts.

L. To the extent any assistance is provided by TCW, or unaffiliated third persons, to the Participants in completing the worksheets and questions designed by the Experts, such assistance is provided by individuals whose compensation is not affected by the investment by the participants and beneficiaries of the assets of their accounts among the Trusts.

M. With respect to its participation in the Program, an independent Plan fiduciary must receive, prior to the Plan's investment in any of the Trusts, complete and detailed written information regarding the Trusts and the Funds which will include, but may not be limited to:

(1) A description of the Program;

(2) The allocation of the Funds in each Trust specified by the Financial Expert, and the basis upon which the Funds in each Trust will be rebalanced so that the Funds' proportionate value in each Trust equals that specified by the Financial Expert;

(3) Upon request by the Plan fiduciary, the current basis upon which the asset allocation of the Trusts was derived;

(4) Full disclosure of all the expenses charged to the Trusts, and how such expenses are allocated;

(5) Full disclosure of all the fees charged by the Funds, which may be accomplished by providing the current prospectus for each of the Funds comprising a Trust; and

(6) A copy of the proposed exemption and the final exemption, as published in the **Federal Register**.

N. (1) Prior to investing in a Trust, each Participant will receive full disclosures which will include, but may not be limited to:

(a) Disclosure regarding composition of the Trusts, and a description of the underlying Funds;

(b) Upon request, a Participant will also receive a copy of the Funds' prospectus[3]; and

(c) The Participant can meet with a facilitator familiar with the Program, or contact such a facilitator using a toll-free number.

(2) Subsequent to his participation in the Program, each Participant will receive the following disclosures which will include, but may not be limited to:

(a) Written confirmations of purchase and redemption transactions for each Participant within 10 days of each such transaction;

(b) Telephone access to the quotations of the Participant's account balance; and

(c) A periodic newsletter describing the Trusts' performance during the preceding period, market conditions and economic outlook and, if applicable, prospective changes in the asset allocation model and the reasons for the change.

O. Each Plan fiduciary will receive the following written disclosures with respect to its ongoing participation in the Program which will include, but may not be limited to:

(1) A quantitative annual report which will include—

(a) Performance Summary for each Fund;

(b) Schedule of Investments for each Fund;

(c) Statements of Assets and Liabilities for each Fund;

(d) Statements of Operations for each Fund;

(e) Statements of Changes in Net Assets for each Fund;

(f) Notes to Financial Statements, which include but are not limited to, primary investment objective of each Fund;

(g) The performance and rate of return achieved for each Trust and the Funds in which the Trust is invested; and

(h) A breakdown of all expenses and fees at the Fund and Trust levels.

P. (1) Except as provided in Section II (P)(2) below, the independent Plan fiduciary will receive, at least 30 days advance notice of any material change in the information described in Section II (M)(2) or (3) regarding the composition of the Trusts or the basis on which the Trusts' assets are rebalanced, and will receive at least 30 days advance notice of any material increase in expenses at the Trust level described in Section II (M)(4);

(2) The Financial Expert will have the sole responsibility for determining the materiality of any changes in the information in Section II (M)(2) or (3). TCW will determine the materiality of any changes described in Section II (M)(4) regarding the expenses charged to the Trusts. For any changes in the information in Section II (M)(2) or (3) which are not material, the independent Plan fiduciaries will be notified within 10 days of such change. For any changes in the information in Section II (M)(4) which are not material the independent Plan fiduciary will be notified at least quarterly. Independent Plan fiduciaries will be afforded, at all times, a reasonable opportunity to terminate their Plans' participation in the Program as described in Section II (Q)(2) below; and

(3) Under extraordinary circumstances outside the control of TCW, the independent Plan fiduciary may not be provided advance notice by TCW of material changes in the information listed in Section II (M)(2) or (3) regarding the composition of the Trusts or the basis on which the Trusts' assets are rebalanced. Under such circumstances, the Plan fiduciaries will be notified within 10 days of any such change. The Financial Expert will determine whether the circumstance is extraordinary and if the change in the composition of the Trusts or in the basis for rebalancing is material.

Q. (1) The Units in the Trusts will be redeemed by TCW, at no charge. Redemption requests received in proper form prior to the close of trading on the New York Stock Exchange (NYSE) will be affected at the net asset value per Unit determined on that day. Redemption requests received after the close of regular trading on the NYSE will be effected at the net asset value at the close of business of the next business day; and

(2) The Plans can redeem their Units in the Trusts on five business days (or less) notice.

R. The Trusts permit participants and beneficiaries to purchase or redeem an interest in the Trust on any day that the shares of the Funds contained within the Trust can be purchased or redeemed. This paragraph (R) does not preclude any Plan from restricting such purchases and redemptions to a less frequent basis.

S. All transactions involving securities owned by the Funds will be executed through brokers in which TCW has no interest and who are unrelated to TCW. TCW will not receive any consideration from such brokers in connection with their selection, or for effecting or executing such transactions

[2] TCW will not receive any fees or other compensation with respect to recommendations regarding investments in an unrelated Money Market Fund, GIC or similar investment vehicle.

[3] TCW anticipates that most Plans which participate in the Program will comply with section 404(c) of the Act. Section 404(c) of the Act requires, in part, that specific disclosures be provided by the Plans to the participants and beneficiaries. See 29 C.F.R. 2550.404c–1(b)(2)(i)(A) and (b)(2)(i)(B)(2)(iv) and (v).

other than research which will benefit the shareholders of the Funds, including the Trusts. TCW brokerage practices will reasonably comply with the requirements of section 28(e) of the Securities Exchange Act of 1934.

T. (1) The independent fiduciaries of Plans participating in the Program will receive full written disclosure, in a statement separate from a Fund prospectus, of any proposed increases in the rates of advisory or other fees charged by TCW to the Funds for services (or of any material increase in expenses charged by TCW to the Funds or fees charged by TCW for internal accounting services for the Funds) at least 30 days prior to the effective date of such increase, accompanied by a termination form (the Termination Form, as described in (2) below) and shall receive full written disclosure in a Fund prospectus, or otherwise, of any such increases in the rate of fees charged by TCW to the Funds; and

(2) The Termination Form shall provide an election to terminate participation in the Program and shall contain instructions on the use of the form that includes the following information: (a) the authorization to participate in the Program is terminable at will by the Plan, without penalty to the Plan, upon receipt by TCW of written notice from the Plan; and (b) failure to return the Termination Form will result in the continued authorization of the Plan's participation in the Program, including investment in the Trusts.

U. TCW maintains, for a period of six years, the records necessary to enable the persons described in paragraph (V) of this Section II to determine whether the conditions of this exemption have been met, including a record of each recommendation made to the participants and beneficiaries, and their subsequent investment choices, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to the circumstances beyond the control of TCW and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(2) no party in interest, other than TCW, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code if the records are not maintained or not available for examination as required by paragraph (V)(1) of this Section II below.

V. (1) Except as provided in subparagraph (2) of this paragraph (V) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (U) of this Section II are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission,

(b) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary,

(c) Any contributing employer to any participating Plan, or any duly authorized employee or representative of such employer, and

(d) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (1)(b)–(d) of this paragraph (V) shall be authorized to examine trade secrets of TCW, or commercial or financial information which is privileged or confidential.

*Section III. Definitions*

A. The term ''Trust'' or ''Trusts'' means a commingled trust or trusts which satisfy the requirements of IRS Revenue Ruling 81–100, 1981–1 C.B. 326 which invest exclusively in one or more of the portfolios of TCW Galileo Funds, Inc., cash or cash equivalents.

B. The term ''Fund'' or ''Funds'' means one or more of the portfolios of TCW Galileo Funds, Inc., an open-end investment company registered under the 1940 Act.

C. The term ''TCW'' means the TCW Group, Inc., and any affiliates thereof as defined below in paragraph (D) of this Section III.

D. The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

E. The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

F. The term ''Financial Expert'' means Professor Jeffrey F. Jaffe, Ph.D., or a successor Financial Expert. Less than 5 percent (5%) of Professor Jaffe's gross income, for federal income tax purposes, in his prior tax year, will be paid by TCW in the immediately subsequent tax year. If the Financial Expert has any income which is not included in the gross income (e.g., interest income which is exempt from federal income taxes), such income may be added to his gross income for his purpose. In the event TCW determines to replace Professor Jaffee or any of his successors, TCW will send a letter to the Department 60 days prior to such replacement. The letter will specify that the successor Financial Expert has responsibilities, experience and independence similar to those of Professor Jaffee. If the Department does not object to the successor, the new appointment will become effective on the 60th day after the Department receives such letter.

G. The term ''Behavioral Expert'' means Professor Shlomo Benartzi, or a successor Behavioral Expert. In the event TCW determines to replace Professor Benartzi or any of his successors, TCW will send a letter to the Department 60 days prior to such replacement. The letter will specify that the successor has responsibilities, experience and independence similar to that of Professor Benartzi. If the Department does not object to the successor, the new appointment will become effective on the 60th day after the Department receives such letter.

H. The term ''net asset value'' of a Trust is defined to mean the fair market value of shares in the Funds and cash and cash equivalents, minus the accrued expenses of a Trust.

**EFFECTIVE DATE:** This exemption is effective as of August 1, 1997, the date the notice of proposed exemption was published in the **Federal Register**.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption (the Notice) published on August 1, 1997 at 62 FR 41433.

**Written Comments**

The Department received two written comments with respect to the Notice and no requests for a public hearing. The first comment was filed by TCW and generally requests clarifications and modifications to the Notice. Set forth below in paragraph 1 are the relevant points of the TCW comment.

The second comment was filed by a representative of the 401(k) Association. This comment generally raises issues about certain aspects of the Notice, and was subsequently sent by the Department to TCW for their response. Set forth below in paragraph 2 is a list of the issues raised by the commenter (the Commenter) together with the responses to those points by TCW.

*1. Discussion of TCW's Comment*

Section I of the Notice exempts, in relevant part, the provision of advice, and the receipt of fees as a result thereof, in connection with the investment by the Plans in the Trusts under the Program.

TCW states that the Notice makes clear in Condition J of Section II of the General Conditions and in the Summary of Facts and Representations (Summary) that, in addition to the Trusts, the Program will also make available non-Trust investment vehicles, *i.e.*, ''a Money Market Fund, a Guaranteed Investment Contract (GIC) or a similar investment vehicle that may or may not be affiliated with TCW.'' While it is anticipated that the Program will normally produce a recommendation for a single Trust, there could be instances in which a non-Trust investment vehicle is recommended. TCW suggests that the last part of the second paragraph of Section I of the Notice be modified to take into account the potential investment by the Plans in the Trusts, a Money Market Fund, a Guaranteed Investment Contract (GIC) or a similar investment vehicle under the Program.

In addition, the Department has determined to modify the above-referenced language in Section I in order to clarify that relief from the prohibited transaction restrictions of section 406(b) of the Act is provided only for the receipt of fees by TCW as a result of the provision of advice by TCW to participants of plans who participate in the Program. Nothing contained in this exemption provides relief from the general standards of fiduciary conduct described in section 404 of the Act for the investment advice provided to participants. Thus, TCW remains fully responsible under the Act for its fiduciary actions. We also note that the plan fiduciary (usually the employer/sponsor) is responsible under the Act for the decision to retain TCW, as well as for periodically monitoring TCW's performance.

Therefore, the Department has modified the above language of Section I of the final exemption to read as follows:

''In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply to the receipt of fees by TCW as a result of the provision of advice in connection with the investment by the Plans in the Trusts, a Money Market Fund, a Guaranteed Investment Contract (GIC) or similar investment vehicle, under the Program.''

TCW also suggests that a new sentence should be added at the end of section 13 (Section) of the Summary. The new sentence should read:

''References to Trust or Trusts in this paragraph also encompass the other investment options available under the Program.'' The Department concurs with this comment.

2. TCW suggests that Condition C of Section II and Section 16(f) of the Summary be modified to provide that the amount of plan assets referred to in those provisions be measured, ''* * * as of the end of the most recent plan year.''

The Department concurs with this comment and has modified Condition C of Section II of the final exemption.

3. TCW requests clarification regarding Condition L of Section II. Although Condition L of Section II is intended to preclude individuals who provide assistance to Participants from receiving compensation which is affected by the specific investments made by such Participants among the Trusts, such individuals may receive enhanced compensation based on the amount invested in the entire Program by all Participants, or by the Participants which they or their teams assist.

4. TCW notes that Condition Q (1) of Section II should indicate more clearly when the net asset value is measured for the purpose of effecting redemption requests received after the close of regular trading on the NYSE when NYSE is closed the next day. TCW suggests that the last phrase in the third sentence in Condition Q(1) ''* * * except on weekends or holidays when the NYSE is closed'' be deleted and that the word ''business'' be inserted between the words ''next'' and ''day'' such that the phrase reads, in relevant part, ''* * * the close of business of the next business day.''

The Department concurs with this comment and has modified Condition Q (1) of Section II of the final exemption.

5. TCW also suggests that in the definition of ''net asset value'' contained in Paragraph H of Section III, the words ''and cash equivalents'' should be added in the third line after the word ''cash'', such that the definition reads as follows:

''The term 'net asset value' of a Trust is defined to mean the fair market value of shares in the Funds and cash and cash equivalents, minus the accrued expenses of a Trust.''

The same change should be made in the next-to-last sentence in Section 4 of the Summary such that the sentence reads as follows:

''The Trusts trade at the net asset value of the amalgam of the Funds in which they are invested, plus any cash and cash equivalents they hold.''

The Department concurs with this comment and has modified Paragraph H of Section III of the final exemption.

6. TCW represents that Continental Asset Management Corp. referenced in Section 1 of the Summary is now named TCW Advisors Inc. and still remains an SEC registered advisor.

7. TCW suggests that to be consistent with footnote 6 of the Notice, the third sentence in Paragraph 2 of the Summary should begin with ''It is anticipated that * * *'' such that the sentence should read:

''It is anticipated that virtually all of the Plans participating in the Program will be designed to comply with the provisions of section 404(c) of the Act.'' The Department concurs with this comment.

Additionally, TCW comments that to more accurately reflect the Worksheet process, the sixth and following sentences in Paragraph 2 of the Summary should read as follows:

''The Worksheets consist of a series of questions designed to assess the Participants' retirement needs and levels of risk tolerance, including his or her current Plan and non-Plan investments, anticipated future savings and retirement goals. Upon completion of the Worksheets, a Participant's response will be analyzed and each Participant will receive a written recommendation from TCW of an appropriate Trust (or other investment vehicle under the Program) for investment. Matching the Worksheet responses to projections of the risk and return characteristics of portfolios available under the Program will allow the selection of a portfolio consistent with that Participant's retirement needs and risk tolerance.''

The Department concurs with this comment.

8. TCW suggests that to describe more accurately the quantitative annual report to be provided by TCW to the Plan Fiduciaries, the second sentence of the second paragraph in Paragraph 10 of the Summary should read as follows:

''The annual report will enable the Plan Fiduciaries to determine whether the Program has increased or maintained Plan participation, has increased or maintained the level of Participants' investment or deferrals under the Plan, or has achieved more appropriate asset allocation for the investment of the Plan Participants' accounts.''

The Department concurs with this comment.

9. TCW also states that to make clear that approval by the Financial Expert is necessary for the creation of any Separate Trust, the word ''only'' should be inserted between the words ''utilized'' and ''if'' in the second sentence of subsection (b) of Paragraph 16 of the Summary such that the modified sentence reads as follows:

''A Separate Trust may be utilized only if the Financial Expert approves such modification.''

The Department concurs with this comment.

*2. Discussion of the Second Comment*

A. Independence of the Financial Expert

In this regard, the Commenter is concerned that TCW will have little or no control over the results of investment recommendations under the Program. Further, the Commenter suggests that Professor Jaffe, the Financial Expert, will be insufficiently involved in the Program due to the 5% overall limit on the amount of income derived from TCW. In addition, the Commenter questions whether the Financial expert will be assuming any personal responsibility for the provision of advice. In response, TCW maintains that TCW will *not* control the results of investment recommendation under the Program; rather, as stated throughout the Notice and as a specific condition in Section II of the Notice and this exemption, those recommendations will be based on responses to the worksheet questions developed and designed by the independent Experts.

As to Professor Jaffe, TCW responds that the 5% limit on his compensation is designed to ensure that he does not depend too heavily on TCW for compensation, but remains independent of TCW.

The Commenter further suggests that Professor Jaffe should not be permitted to be contractually indemnified by TCW. TCW responds by stating that if Professor Jaffe is so indemnified, it will not make him any less independent of TCW. To the contrary, a contractual indemnity would give him rights in dealing with TCW that he might otherwise lack. Also, the amount of indemnification offered to Professor Jaffe by TCW will not be dependent on the nature of the advice provided the Participant. Further, as TCW points out, the Department recognizes that even indemnities relating to breaches of statutory fiduciary duties are permissible under the Act, provided that they are not paid from plan assets, or do not attempt to induce a breach of fiduciary duty. (See 29 CFR section 2509.75–4). TCW also maintains that it has every incentive to respect the professional independence of Professor Jaffe because he is central to the operation of the Program, and intends to structure any agreement with Professor Jaffe so as to ensure his independence.

The Commenter also raises similar questions regarding the independence of persons who will do computer programming in connection with the Program in as much as such programmers are hired by TCW. TCW notes that the Commenter has misunderstood the role of the programmers. The programmers will perform a ministerial function, *i.e.,* to handle the technical aspects of programming. The substantive aspects of the computer programs will be controlled by the Financial Expert and the Behavioral Expert. Therefore, TCW maintains that concerns about compensation or indemnification of the programmers is misplaced. In any event, TCW believes that preclusion of any indemnity of the programmers would be inappropriate for the same reasons expressed as to Professor Jaffe.

b. The Fee Arrangements

A second concern of the Commenter appears to be fee arrangements associated with the Program. The Commenter appears to question the reasonableness of the fee arrangements and what the Commenter refers to as the 1% fee on a participant's account balance. TCW notes that there is no such fee; rather, the 1% figure refers to a cap that limits the amount of direct expenses payable from the Trusts for the services necessary to operate the Program. The only fees that TCW will receive are the normal fees charged for advisory services to the underlying Funds. These fees are paid from the Funds and would affect Participants investing in the Funds through the Program in exactly the same manner as any other investor in the Funds.

There will be no fees paid to TCW by the Trusts or by any Plan for advisory services or for any other services necessary for the operation of the Program. The Commenter apparently misinterpreted a reference in the Notice to a cap of 1% of a Trust's net asset value per annum on amounts payable by a Trust for services necessary to operate the Program. This cap is discussed in more detail in Section 19 of the Summary in the Notice. As Section 19 states, these expenses will include reimbursement to TCW for direct expense payments to third parties unaffiliated with TCW. As stated in the last paragraph of Section 18 of the Summary, to the extent that TCW itself receives reimbursement of any expenses, it will be limited to reimbursement of ''direct expenses'' within the meaning of 29 CFR section 2550.408c–2.

In short, TCW will receive no fees in connection with the Program other than normal advisory fees in connection with the mutual funds. The 1% cap on direct expenses paid by the Trusts is a safeguard to ensure that the Trusts do not pay excessive expenses; it is not intended to, and would not, authorize any payment of fees to TCW from a Trust. TCW expressly states that the Plan Participants' accounts will not be charged fees by TCW in connection with the Program. Furthermore, Plan Participants will have complete discretion whether to invest in any Trusts and will be free to accept or reject any investment recommendations made in connection with the Program.

c. Recommendations

To address his concerns, the Commenter recommends that the following six specific recommendations be adopted in any final grant of the exemption by the Department:

1. Require those individuals/entities that are providing the advisory-related services to assume the liability exposure for the services they are providing. Prohibit TCW or any other entity from indemnifying them.

2. Limit the compensation that is paid for this service to a maximum amount per participant, such as $250.00.

3. Require each participant to decide whether he/she wants this additional service. The participant also should be able to discontinue the service at any time.

4. Require an independent audit by one of the major auditing firms at least annually of the process and the entities involved to certify that there is in fact independence.

5. Require the submission to DOL of a signed disclosure form for each employer that buys this service.

6. Require TCW to submit to DOL annually a confirmation that the disclosure conditions have been satisfied. This notice should include a list of all employers in the program, and it should be signed by the CEO of the TCW Group.

In response to these recommendations, TCW maintains the following.

The first recommendation regarding indemnity has been addressed above. TCW maintains that this recommendation is unnecessary and unreasonable.

The second and third recommendations appear to be based on the misunderstanding relating to the 1%

fee discussed above. TCW maintains that because there is no such fee, there is no reason to change its form or limit it. A Participant is, as noted above, already completely free to decide whether to begin or to discontinue investments under the Program.

The last three recommendations do not appear to be otherwise discussed in the comment letter. TCW's general response to these recommendations is that they will likely add unnecessary expense to the Program without any corresponding benefit. To the extent that these recommendations arise from the Commenter's misunderstanding of the fee arrangement and other aspects of the Program, they should be rejected by the Department on that basis.

Specifically, it is not clear to TCW exactly how an auditing firm would perform an audit to verify independence; as a practical matter, because the independence of the Experts is central to the Program and this exemption, TCW would have every incentive to ensure that independence is maintained. Similarly, if the Department wishes to audit the Program, or to monitor compliance with the conditions of the exemption, it will exercise its statutory powers under section 504 of the Act. Alternatively, the Department can access the relevant records pursuant to Condition V of Section II of the Notice and of this exemption. Imposing an additional requirement that the names of the plan sponsors who have selected the Program be submitted to the Department along with the signed disclosure forms may act as a deterrent to the plan sponsors' selection of the Program. Furthermore, TCW is fully committed to complying with the substantive disclosures requirement contained in the Notice and in this exemption because such a requirement will provide meaningful information to the Plan Participants and fiduciaries. TCW states that imposing additional requirements would be detrimental to the Program while offering no additional protection to the Participants.

The Department has considered the comments and the responses set forth by TCW and has determined that no modification of this exemption is necessary regarding the points raised by the Commenter. With respect to the recommendations of the Commenter, the Department notes that each exemption is subject to the explicit condition that the material facts and representations submitted in support of an application are true and accurate. The exemption application contains the representations of the applicant. Many such representations are reflected in the terms and conditions of the exemption. These terms and conditions provide for the independence of the Experts and the disclosures to be provided by TCW. Thus, to the extent that TCW does not comply with the terms and conditions of the exemption, the exemption would be void.

After giving full consideration to the entire record, including the written comments, the Department has decided to grant the exemption subject to the modifications or clarifications described above. The two comment letters have been included as part of the public record of the exemption application. The complete exemption file is available for public inspection in the Public Disclosure Room of the Pension and Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 30th day of October, 1997.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 97–29175 Filed 11–3–97; 8:45 am]

BILLING CODE 4510–29–P

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting

### Sunshine Act Meeting of the Board of Directors

**CORRECTION:** As published on Oct. 28, 1997 (62 FR 55833), the agenda for the meeting scheduled for Nov. 15, 1997, is incorrect. The publication is corrected as follows:

9. Consider and act on the report of the Ad Hoc Committee on Performance Reviews of the President and Inspector General.

a. Consider and act on procedural matters, including personal performance plans for the President and the Inspector General, written submissions prior to interviews, and interview protocols.

Dated: October 31, 1997

**Victor M. Fortuno,**

*General Counsel.*

[FR Doc. 97–29280 Filed 10–31–97; 12:50 pm]

BILLING CODE 7050–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Notice of Availability

**AGENCY:** Office of Management and Budget, Office of Federal Procurement Policy.

**ACTION:** Notice of availability of the *Procurement Regulatory Activity Report, Number 14.*

**SUMMARY:** Subsections 25(g) (1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Pub. L. 100–679, codified at 41 U.S.C. 421(g), require the Administrator for Federal Procurement Policy to publish a report within six months after the date of

enactment and every six months thereafter relating to the development of procurement regulations.

Accordingly, OFPP has prepared this report, which is designed to satisfy all aspects of subsections 25(g) (1) and (2) of the OFPP Act, and includes information on the status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and such other matters as the Administrator determines to be useful.

**ADDRESSES:** Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report may contact the Executive Office of the President Publications Service, Room 2200, 725 17th Street, NW, Washington, DC 20503, or call 202–395–7332.

**ADDITIONAL INFORMATION:** For additional information write the Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503 or call 202–395–6803.

**Allan E. Brown,**

*Acting Administrator.*

[FR Doc. 97–29157 Filed 11–3–97; 8:45 am]

**BILLING CODE 3110–01–P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Public Hearing on Trans World Airlines (TWA) Flight 800 Accident

In connection with its investigation of the accident involving Trans World Airlines (TWA) flight 800, a Boeing 747–100, N93119, in the Atlantic Ocean near East Moriches, NY, July 17, 1996, the National Transportation Safety Board will convene a public hearing beginning at 9:00 a.m., on Monday, December 8, 1997, at the Baltimore Convention Center, Halls A and B, One West Pratt Street, Baltimore, MD. For more information, contact Shelly Hazle, Office of Public Affairs, Washington, D.C. 20594, telephone (202) 314–6100.

Dated: October 30, 1997.

**Ray Smith,**

*Alternate Federal Register Liaison Officer.*

[FR Doc. 97–29145 Filed 11–3–97; 8:45 am]

**BILLING CODE 7533–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–302]**

### Florida Power Corporation; Crystal River Nuclear Generating Plant Unit 3, Exemption

**I.**

Florida Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of the Crystal River Nuclear Generating Plant Unit 3 (CR3). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is of a pressurized water reactor type and is located in Citrus County, Florida.

**II.**

In its letter dated June 21, as supplemented November 22, 1996, the licensee requested an exemption from the Commission's regulations.

Title 10 of the *Code of Federal Regulations,* part 50, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 3, ''Fire Protection,'' specifies that ''Structures, systems, and components important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions.'' 10 CFR part 50, Appendix R sets forth the fire protection features required to satisfy the general design Criterion 3 of the Commission's regulations. Pursuant to 10 CFR part 50, Appendix R, Section III, Paragraph G, design features shall be established that are capable of limiting fire damage so that one train of systems necessary to achieve and maintain hot shutdown conditions is free of fire damage. Specifically, 10 CFR part 50, Appendix R, Paragraph III.G.2.c requires (if Paragraphs III.G.2.a or b are not applicable) enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating; in addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

The current CR3 design includes Thermo-Lag fire barriers which do not provide the level of fire resistance required by NRC regulations. As part of its program for resolving Thermo-Lag issues, the licensee has determined that the Thermo-Lag material used as a fire barrier for the protection of certain safe shutdown cables located in certain elevations of the auxiliary and intermediate buildings does not qualify as 1-hour fire rated barriers. In lieu of upgrading the existing Thermo-Lag fire barriers to satisfy the 1-hour fire rating requirement, the licensee proposes to implement an enhanced automatic fire suppression system coverage for these specific fire zones. The licensee indicates that its proposed enhanced automatic fire suppression system coverage coupled with the existing Thermo-Lag barriers and other defense-in-depth features will ensure that one train of equipment necessary to achieve hot shutdown remains free of fire damage. An exemption from 10 CFR Part 50, Appendix R, Section III, Paragraph G.2.c., is required to allow the use of the existing Thermo-Lag material that has less than a 1-hour fire rating, for the specific cables and equipment located in certain elevations of the auxiliary and intermediate buildings. By letter dated June 21, as supplemented November 22, 1996, the licensee submitted the exemption request.

This exemption does not address the licensee's request relating to the requirements for battery powered lighting in areas for the operation of safe shutdown equipment.

**III.**

*Discussion*

The exemption request is for the following fire zones: auxiliary building fire area AB–95–3B and G, AB–119–6A (elevations 95 and 119) and the intermediate building fire area IB–119–201A (elevation 119). Automatic sprinkler protection and automatic fire detection designed and installed in accordance with the applicable National Fire Protection Association (NFPA) codes and standards are provided in these fire zones. The licensee, in its response to the U.S. Nuclear Regulatory Commission (NRC) staff's request for additional information (RAI) dated September 24, 1996, identified no significant deviations from the applicable NFPA codes and standards that would adversely affect system performance. The licensee has proposed upgrading the existing automatic sprinkler protection in each of these zones to compensate for the existing Thermo-Lag fire barriers. The licensee has determined that the existing Thermo-Lag fire barriers, coupled with the enhanced sprinkler protection and administrative controls, provide an adequate level of fire protection. The staff's evaluation of the licensee's exemption request is discussed below.

Auxiliary Building Hallway AB–95–3BA

This zone is the main east/west corridor for this elevation of the auxiliary building. The corridor is approximately 9 feet wide and the ceiling is approximately 26 feet above the floor level. An open stairway at the east end of this fire zone leads up to elevation 119 of the auxiliary building (AB 119–6A) and is open to adjacent fire zones at each end. The remainder of the zone is bounded by 3-hour fire walls on the north, east, and west. The ceiling and floor are also 3-hour fire rated barriers. The south wall is a non-fire rated concrete barrier with unsealed penetrations. The fire hazards in this zone include cables, electrical cabinets and an air conditioning unit. The safe shutdown circuits located in this zone are associated with the makeup system and battery charging. The unprotected redundant circuits are within 5 feet of the Thermo-Lag protected cables. The fire protection features provided for this zone include a wet pipe sprinkler system, hose station, and smoke detection. The licensee has performed an engineering evaluation that concluded that the Thermo-Lag fire barriers in this zone have an equivalent fire rating of 23 to 48 minutes.

Auxiliary Building Hallway AB–95–3G

This is a north/south corridor providing access to the make-up pump cubicles. This zone is enclosed by non-fire rated concrete walls ranging from 24 to 36 inches thick. The floor and ceiling are 3-hour rated fire barriers. The fire hazards in this zone include cables and electrical cabinets. The safe shutdown circuits located in this zone are associated with the makeup system and battery charging. The unprotected redundant circuits are within 1 foot of the Thermo-Lag protected cables. The fire protection features provided for this zone include a wet pipe sprinkler system, hose station, and smoke detection. The licensee has performed an engineering evaluation that concluded that the Thermo-Lag fire barriers in this zone have an equivalent fire rating of 23 to 48 minutes.

Auxiliary Building Hallway AB–95–3G

This zone is the main east/west corridor for this elevation of the auxiliary building. The corridor is approximately 9 feet wide and 40 feet high. An open stairway at the east end of this fire zone leads down to elevation 95 of the auxiliary building (AB–95–3B) and is open to adjacent fire zones at each end. The remainder of the zone is enclosed by 3-hour fire walls on the north, east and west side, a 3-hour fire rated floor and a 36-inch thick concrete non-fire rated ceiling and south wall. The fire hazards in this zone include cables and fan motors. The safe shutdown circuits located in this area are associated with the makeup system, heating ventilation and air conditioning (HVAC), instrumentation, battery charging and essential power supplies. The unprotected redundant circuits are greater than 20 feet from the Thermo-Lag protected cables; however, intervening combustibles are present. The fire protection features provided for this zone include a wet pipe sprinkler system, hose station, and smoke detection. The licensee has performed an engineering evaluation that concluded that the Thermo-Lag fire barriers in this zone have an equivalent fire rating of 23 to 39 minutes.

Intermediate Building Industrial Cooler Room IB–119–201A

This zone connects the industrial room cooler to the auxiliary building and is located between the turbine building and the reactor building. The corridor is a narrow hallway with a ceiling approximately 26 feet high. This zone is separated from the turbine building by a 3-hour rated wall. The zone is also separated from the reactor building by a non-fire rated concrete wall approximately 42 inches thick. The east side of this zone is adjacent to fire zone IB–119–201B, separated by a ''jailbar'' door. The fire hazards in this zone include cables and electrical cabinets. The safe shutdown circuits located in this zone are associated with instrumentation. The unprotected redundant circuits are within 3 feet of the Thermo-Lag protected cables. The fire protection features provided for this zone include a wet pipe sprinkler system, hose station, and smoke detection. The licensee has performed an engineering evaluation that concluded that the Thermo-Lag fire barriers in this zone have an equivalent fire rating of 22 to 36 minutes.

Intermediate Building Personnel Hatch IB–119–201B

This zone connects the industrial cooler room with the auxiliary building. The floor area is approximately 1100 square feet. The north, east and part of the south wall have a 3-hour fire rating. The remaining portion of the south wall is the reactor building non-fire rated concrete wall approximately 42 inches thick. The fire hazards in this zone are cables and protective clothing storage. The safe shutdown circuits located in this zone are associated with instrumentation. The unprotected redundant circuits are within 20 feet of the Thermo-Lag protected cables. The fire protection features provided for this zone include a wet pipe sprinkler system, hose station, and smoke detection. The licensee has performed an engineering evaluation that concluded that the Thermo-Lag fire barriers in this zone have an equivalent fire rating of 22 to 36 minutes.

**IV.**

*Evaluation*

A fire on the 95 or 119 elevations of the auxiliary building could cause the loss of the redundant divisions of the makeup system, HVAC, instrumentation, battery charging or essential power supplies. A fire on the 119 elevation of the intermediate building could cause the loss of redundant divisions of instrumentation needed to achieve and maintain safe shutdown following a fire.

The licensee has committed to upgrade the existing sprinkler protection on elevations 95 and 119 of the auxiliary building and on elevation 119 of the intermediate building in the vicinity of the Thermo-Lag fire barriers that are the subject of this exemption request. The additional sprinkler protection, coupled with the existing automatic detection and suppression, and manual fire suppression capability provided in these fire zones, would provide reasonable assurance that an exposure fire from in situ or transient combustible materials in the vicinity of the Thermo-Lag fire barriers will not challenge the barriers, such that damage to redundant divisions of systems and instrumentation needed to achieve and maintain safe shutdown following a fire will not occur. Due to variations in the important parameters of the installed Thermo-Lag barriers from the tested barriers, and deviations in the conduct of the industry-sponsored fire endurance tests from the guidance provided in Supplement 1 to Generic Letter 86–10, the equivalent fire resistance rating of the Thermo-Lag fire barriers at Crystal River Unit 3, that are the subject of this exemption request, is indeterminate. However, based on data obtained from industry-sponsored fire test programs, the staff estimates that the existing Thermo-Lag barriers would provide a minimum of 20 minutes of fire resistance. The licensee has committed to maintain the Thermo-Lag fire barriers that are the subject of this request in place. Automatic wet pipe sprinkler protection that is designed, installed and maintained in accordance with NFPA 13, ''Installation of Sprinkler Systems,'' have historically

demonstrated a high reliability in controlling fires during the incipient stage, thereby limiting fire damage and propagation until extinguishment can be achieved through manual actions. The licensee has stated that an upgrade of the existing Thermo-Lag fire barriers to achieve literal compliance with the regulation is not feasible due to the locations of the raceways; however, the protection provided by the existing Thermo-Lag and supplemented with fire suppression capability by the additional sprinkler heads would protect one train of safe shutdown cables and satisfy the underlying purpose of the rule. On the basis of its review and evaluation of the technical information provided in the licensee's exemption request and the licensee's response to the request for additional information, the NRC staff concludes that the licensee's proposed alternative means of protection coupling the existing barriers with enhanced suppression capability provides a level of safety equivalent to that prescribed by the regulation.

**V.**

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The underlying purpose of 10 CFR part 50, Appendix R, Section III.G, Fire Protection of Safe Shutdown Capability, is to ensure the capability to achieve and maintain safe shutdown conditions during and after any postulated fire in the plant. The staff has concluded that the licensee's proposed alternative means of protection, as described in its request for exemption from the technical requirements of Section III.G.2.c for auxiliary building fire area AB–95–3B and G, AB–119–6A (elevations 95 and 119) and the intermediate building fire area IB–119–201A (elevation 119), would provide reasonable assurance that a level of safety equivalent to that specified by the regulation would be met. Therefore, application of the one hour barrier requirement under the above circumstances is not necessary to achieve the underlying purpose of the rule.

**VI.**

In consideration of the foregoing, the NRC staff has concluded that the licensee's proposed use of an enhanced automatic fire suppression system coverage for these specific areas in lieu of upgrading the existing Thermo-Lag fire barriers to satisfy the 1-hour fire rating requirement, is authorized by law, will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR 50, Appendix R, Section III G.2.c, is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission hereby grants, pursuant to 10 CFR 50.12(a), the requested exemption. The granting of this exemption is contingent upon (1) the installation of the enhanced fire suppression capability as described in the licensee's request, and (2) maintaining in place the existing fire barriers that are the subject of this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (62 FR 56207).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of October 1997.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–29140 Filed 11–3–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–302]**

## Florida Power Corporation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from certain requirements of its regulations to Florida Power Corporation (the licensee), holder of Facility Operating License No. DPR–72 for operation of the Crystal River Unit 3 Nuclear Generating Plant (CR3) located in Citrus County, Florida.

**Environmental Assessment**

*Identification of Proposed*

The proposed action is in accordance with the licensee's application dated September 5, 1997, for exemption from certain requirements of Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' to Title 10 of the *Code of Federal Regulations* part 50 (10 CFR part 50), Section III, Paragraph O, ''Oil Collection System for Reactor Coolant Pump.'' Specifically, the licensee requests an exemption from the Appendix R, Section III.O technical requirements for an oil collection system capable of collecting all potential leakage for the CR3 Reactor Coolant (RCP) Motor Remote Oil Addition Lines (ROALs).

*The Need for the Proposed*

10 CFR part 50, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 3 ''Fire Protection,'' specifies that ''Structures, systems, and components important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions.'' 10 CFR part 50, Appendix R, sets forth the fire protection features required to satisfy the General Design Criterion 3 of the Commission's regulations. Pursuant to 10 CFR part 50, Appendix R, Section III, Paragraph O, ''Oil Collection System for Reactor Coolant Pump,'' the RCP shall be equipped with an oil collection system which ''* * * shall be capable of collecting lube oil from all potential pressurized and unpressurized leakage sites in the reactor coolant pump lube oil systems.''

In 1985, CR3 added ROALs to the original RCP oil fill lines in order to eliminate the need to shutdown the reactor, and to reduce personnel radiation and heat stress exposure during periodic RCP oil additions. At that time, the licensee did not consider the ROALs as a part of the RCP lube oil systems and as a result, did not provide a lube oil collection system to collect potential leakages. As part of its current Appendix R design review project, the licensee has now determined the ROALs to be a part of the RCP lube oil systems, therefore, requiring a lube oil collection system.

The licensee states that because the ROALs are of a rugged leak tight design and used only periodically in accordance with controlled plant procedures, the ROALs do not impact post fire safe shutdown capability. As a result, the licensee believes that a lube oil collection system for the ROALs is

not necessary to achieve the underlying purpose of the rule. Exemption from Appendix R, Paragraph O, requirements is needed for the licensee to have ROALs without a lube oil collection system for collecting oil from potential leak sites.

*Environmental Impacts of the Proposed Action*

With regard to environmental impact, the Commission has evaluated the proposed action as described below.

The proposed action will not result in an increase in the probability or consequences of accidents or result in a change in occupational or offsite dose. Therefore, there are no radiological impacts associated with the proposed action.

The proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no environmental impacts associated with this action.

*Alternative to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of CR3, dated May 1973.

*Agencies and Persons Consulted*

In accordance with its stated policy, on October 29, 1997 the staff consulted with the Florida State Official, Mr. Bill Passetti of the Florida Department of Health and Rehabilitative Services, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated September 5, 1997, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, Maryland, this 29th day of October 1997.

For the Nuclear Regulatory Commission.

**Leonard A. Wiens,**

*Acting Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–29141 Filed 11–3–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–315 and 50–316]**

## Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action is in response to the licensee's application dated August 5, 1997, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Final Safety Analysis Report (FSAR) and design change reports for facility changes made under 10 CFR 50.59 for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2. Under the proposed exemption, the licensee would schedule updates to the single, unified FSAR for the two units that comprise the Donald C. Cook Nuclear Plant once per Unit 1 fuel cycle.

*The Need for the Proposed Action*

Section 50.71(e)(4) of Title 10 of the Code of Federal Regulations requires licensees to submit updates to their UFSAR within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. Since the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, share a common FSAR, the licensee must update the same document within 6 months after a refueling outage for either unit. Because the Donald C. Cook Nuclear Plant units have alternating refueling outages, the regulatory requirement to submit an update after the completion of one unit's refueling outage when the other unit is scheduled for a refueling outage within 6 to 12 months results in an administrative burden which does not significantly enhance safety. The proposed exemption is needed to permit a single update of the unified FSAR for the two Donald C. Cook Nuclear Plant units per each Unit 1 fuel cycle.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that it will not alter or affect plant operation. Allowing the exemption would maintain the Donald C. Cook Nuclear Plant FSAR current within 24 months of the last revision and would not exceed the 24-month interval for submission of the 10 CFR 50.59 design change report for either unit.

No changes are being made in the types or amounts of any radiological effluent that may be released offsite and there is no increase in the allowable individual or cumulative occupational exposure. Therefore, there are no significant radiological impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action will not change nonradiological plant effluents and will have no other nonradiological environmental impact. Therefore, there are no significant nonradiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental

Statement for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, dated August 1973.

*Agencies and Persons Consulted*

In accordance with its stated policy, on September 30, 1997, the NRC staff consulted with the Michigan State official, Dennis Hahn of the Michigan Department of Public Health, Nuclear Facilities and Environmental Monitoring, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon its environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 5, 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 Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, MD, this 29th day of October 1997.

For the Nuclear Regulatory Commission.

**John B. Hickman,**

*Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–29139 Filed 11–3–97; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### SES Performance Review Board

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the membership of the OPM SES Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Mary Lynn Horst, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, (202) 606–2165.

**SUPPLEMENTARY INFORMATION:** Section 4314 ( c ) ( 1 ) through ( 5 ) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointment authority relative to the performance of the senior executive.

Office of Personnel Management.

**Janice R. Lachance,**

*Acting Director.*

Following are the regular members of the SES Performance Review Board for the Office of Personnel Management:

William F. Flynn, III, Associate Director, Retirement and Insurance Service
Richard A. Ferris, Associate Director, Investigations Service
Mary Lou Lindholm, Associate Director, Employment Service
Carol Okin, Associate Director, Office of Merit Systems Oversight and Effectiveness
Leigh M. Shein, Acting Chief of Staff
Rose M. Gwin, Director, Office of Human Resources and EEO

[FR Doc. 97–29121 Filed 11–3–97; 8:45 am]

**BILLING CODE 6325–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Intent To Prepare an Environmental Impact Statement and To Conduct a Scoping Meeting for the Proposed Expansion of Flying Cloud Airport, Eden Prairie, MN

**AGENCY:** Department of Transportation, Federal Aviation Administration.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement and to conduct public scoping.

**SUMMARY:** The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared on the proposed expansion of the Flying Cloud Airport. The expansion consists of the extension of two parallel runways. The longer of the two runways (Runway 09R–27L) would be extended 1,100 feet to 5,000 feet from its current length of 3,900 feet. The other runway to be extended, (Runway 09L–27R) would be extended 300 feet to 3,900 feet from its current length of 3,600 feet. Two alternatives on the aircraft weight limitations currently in place at Flying Cloud Airport also are under consideration. The first alternative would retain the current limitation of 20,000 pounds maximum gross weight. The second alternative would allow aircraft up to 30,000 pounds maximum gross weight. Land would be acquired for the expansion of State Safety Zones A and B at the west end of the parallel runways and for navigational aids and lights in the Runway Protection Zone. In addition, land would be acquired for the eventual construction of additional hangars south of the parallel runways and for an access road which would connect County Road 4 to the building area. To ensure that all significant issues related to the proposed action are identified, the FAA is soliciting information and comments from the public concerning this project and is advising Federal, State and local agencies and the public of the scoping process and scheduled meetings that will be conducted as a part of this process.

**FOR FURTHER INFORMATION CONTACT:** Mr. Glen Orcutt, Airports District Office, Federal Aviation Administration, 6020–28th Avenue South, Room 102, Minneapolis, Minnesota 55450 (612) 713–4354.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA, in cooperation with the Minneapolis Metropolitan Airports Commission (MAC) will prepare a joint Federal/State EIS for the proposed expansion of Flying Cloud Airport. The EIS will evaluate a No-Action alternative, the proposed actions and other reasonable alternatives that may be identified during the agency and public scoping meetings. The EIS will compare all feasible alternatives, and will ensure that mitigating measures are considered to minimize adverse environmental consequences.

The Minnesota scoping process requires the preparation of an Environmental Assessment Worksheet (EAW) and Draft Scoping Decision (DSD), combined in one document. The format for the EAW is the Minnesota Environmental Quality Board's Environmental Assessment Worksheet. A Scoping EAW and DSD has been prepared by the MAC and will be circulated to Federal, State and Local agencies for their review and comment. The Scoping EAW and DSD addresses the alternatives and potential impacts and issues to be addressed in the Federal/State EIS.

The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amendment (42 U.S.C. 4371, *et seq.*), CEQ regulations (40 CFR 1500–1508), FAA Orders 5050.4A and 1050.1D and all applicable Federal and State regulations and local ordinances.

**Public Scoping**

To ensure that the full range of issues related to the proposed project are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. In order to facilitate public input at the scoping meeting, the Scoping EAW and DSD is being sent to Federal, State and Local agencies, and to known interested parties.

A public scoping meeting is scheduled for December 4, 1997, at the Pax Christi Catholic Community, 12100 Pioneer Trail, Eden Prairie, Minnesota, at 8:00 p.m. to allow for public input. Copies of the Scoping EAW and DSD are available to the public at the Metropolitan Airports Commission, FAA Airports District Office, at the Bloomington, Chanhassen, Eden Prairie and Shakopee City Halls and for public review at the following libraries: Bloomington Penn Lake Public Library, 8800 Penn Avenue South; Chanhassen Public Library, 690 Coulter Drive; Eden Prairie Public Library, 479 Prairie Center Drive; and, the Shakopee Public Library, 235 South Lewis Street.

Written comments will be accepted until December 19, 1997 and may be directed to the FAA at the following address.

**ADDRESSES:** Federal Aviation Administration, Airports District Office, MSP–ADO–600, 6020–28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

Issued in Minneapolis, Minnesota on October 23, 1997.

**Gordon Nelson,**

*Acting Manager, Airports Division, FAA, Great Lakes Region.*

[FR Doc. 97–29124 Filed 11–03–97; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. 97–070; Notice 1]**

### Uniroyal Goodrich Tire Manufacturing; Receipt of Application for Decision of Inconsequential Noncompliance

Uniroyal Goodrich Tire Manufacturing (Uniroyal) of Greenville, South Carolina, which is an operating unit of Michelin North America, Inc., has determined that some of its tires fail to comply with the labeling requirements of 49 CFR § 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires,'' and has filed an appropriate report pursuant to 49 CFR part § 573, ''Defect and Noncompliance Reports.'' Uniroyal has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In FMVSS No. 109, Paragraph S4.3.5 requires that ''if the maximum inflation pressure of a tire is 420 kPa (60 psi), the tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high, the words ''Inflate to 60 psi'' or ''Inflate to 420 kPa (60 psi).''

From the 30th through the 37th week of 1975, the Uniroyal plant located in Woodburn, Indiana, produced approximately 4,800 temporary spare tires (T115/70D14 Uniroyal Hideaway tires) with a minor omission of the markings required by 49 CFR § 571.109 S4.3.5 on one side of the tire. Instead of ''INFLATE TO 60 PSI'' these tires were marked ''NFLATE TO 60 PSI.'' A total of 2,750 of the 4,800 tires were delivered to Original Equipment Manufacturers (OEM) customers, the remaining 2,050 have been isolated in Uniroyal's warehouses and will be brought into full compliance with the marking requirements of FMVSS No. 109 or scrapped.

Uniroyal supports its application for inconsequential noncompliance with the following statements:

1. All performance requirements of FMVSS No. 109 are met or exceeded.

2. The correct marking appears on one side of the tire.

3. It is reasonable to expect that the consumer will interpret ''NFLATE TO 60 PSI'' as ''INFLATE TO 60 PSI,'' especially when it is used in reference to a pressure of 60 PSI.

4. The vehicle placard, as required by 49 CFR § 571.110 S4.3, [specifies] the proper inflation pressure to use.

Interested persons are invited to submit written data, views, and arguments on the application of Uniroyal described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C., 20590. It is requested that ten copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 4, 1997.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 29, 1997.

**L. Robert Shelton,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 97–29123 Filed 11–3–97; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for the Survey for the Electronic Tax Administration Tracking Study

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Survey for the Electronic Tax Administration Tracking Study.

**DATES:** Written comments should be received on or before January 5, 1998 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Survey for the Electronic Tax Administration Tracking Study.

*OMB Number:* To be assigned later.

*Abstract:* This is a survey for quantitative research to establish

baseline measures of public knowledge and acceptance of Electronic Tax Administration (ETA) programs. The data developed in this research will be used as a guide when making decisions on the development of future ETA products and effective marketing techniques. The survey will provide the level of detail needed to focus product development efforts and enhance current products. This information will be used to make quality improvements to products and services.

*Current Actions:* This is a new collection of information.

*Type of Review:* New OMB approval.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 10,000.

*Estimated Time Per Respondent:* 7 minutes.

*Estimated Total Annual Burden Hours:* 1,166.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**REQUEST FOR COMMENTS:** Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 30, 1997.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 97–29165 Filed 11–3–97; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 3520

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

Currently, the IRS is soliciting comments concerning Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.

**DATES:** Written comments should be received on or before January 5, 1998 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.

*OMB Number:* 1545–0159.

*Form Number:* Form 3520.

*Abstract:* Form 3520 is filed by U.S. persons who create a foreign trust, transfer property to a foreign trust, receive a distribution from a foreign trust, or receive large gifts from a foreign source. IRS uses the form to identify U.S. persons who have transactions that may trigger a taxable event in the future.

*Current Actions:* The following changes were made:

Form 3520 was revised to reflect the expanded reporting requirements added to Code sections 6048 and 6039F by the Small Business Job Protection Act for foreign trusts that have a U.S. grantor, transferor, or executor. The revised form is divided into four parts:

Part I of the form reflects the expanded reporting requirements for U.S. persons who directly or indirectly transfer money or property to a foreign trust. This includes a transfer by reason of death of a U.S. citizen or resident, if any portion of a foreign trust was included in the gross estate of the decedent.

Part II of the form is used to report the annual income information required for U.S. persons that are treated as owners 3 of any portion of a foreign trust for U.S. income tax purposes under Code sections 671 through 679.

Part III of the form is used by U.S. beneficiaries of a foreign trust to report any distributions they received from the foreign trust after August 20, 1996.

Part IV of the form is used by any U.S. person to report large gifts or bequests received after August 20, 1996, from foreign sources.

*Type of Review*: Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 2,000.

*Estimated Time Per Respondent:* 61 hr., 46 min.

*Estimated Total Annual Burden Hours:* 123,520.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 28, 1997.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 97–29170 Filed 11–3–97; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 2439

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains.

**DATES:** Written comments should be received on or before January 5, 1998 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Notice to Shareholder of Undistributed Long-Term Capital Gains.

*OMB Number:* 1545–0145.

*Form Number:* Form 2439.

*Abstract:* Form 2439 is used by regulated investment companies (RICs) and real estate investment trusts (REITs) to report undistributed capital gains and the amount of tax paid on these gains designated under Internal Revenue Code section 852(b)(3)(D) or 857(b)(3)(D). The company, the trust, and the shareholder file copies of Form 2439 with the IRS. The IRS uses the information to verify that the shareholder has included the capital gains in income.

*Current Actions:* The following changes were made:

The Tax Relief Act of 1997 (Act) made the following changes in law affecting Form 2439.

1. For tax years beginning after August 5, 1997, section 1254 of the Act adds section 857(b)(3)(D) to the Code, which allows a REIT to elect to retain, rather than distribute, its net long-term capital gains and pay tax on these gains. As a result, REITs and their shareholders are now added to Form 2439. Shareholders include in income their proportionate share of the undistributed capital gains and take a credit for their share of the tax paid by the REIT.

2. Section 311 of the Act changed the capital gains rate for individuals. The Act requires that pass-through entities, such as RICs and REITs, must now provide the necessary information so shareholders can identify the components of their undistributed capital gains to complete Schedule D (Form 1040).

New box 1b is added to report the ''28% rate gain''.

New box 1c is added to report the ''Unrecaptured section 1250 gain''.

New box 1d is added to report the ''Section 1202 gain''.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 8,000.

*Estimated Time Per Respondent:* 3 hr., 31 min.

*Estimated Total Annual Burden Hours:* 28,160.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 28, 1997.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 97–29171 Filed 11–3–97; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1310

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer.

**DATES:** Written comments should be received on or before January 5, 1998 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Person Claiming Refund Due a Deceased Taxpayer.

*OMB Number:* 1545–0073.

*Form Number:* Form 1310.

*Abstract:* Form 1310 is used by a claimant to secure payment of a refund on behalf of a deceased taxpayer. The information requested on the form

enables the IRS to send the refund to the correct person.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 7,500.

*Estimated Time Per Respondent:* 43 min.

*Estimated Total Annual Burden Hours:* 5,325.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 29, 1997.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 97–29172 Filed 11–3–97; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Proposed Collection; Comment Request for Forms 8275 & 8275–R

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8275, Disclosure Statement and Form 8275–R, Regulation Disclosure Statement.

**DATES:** Written comments should be received on or before January 5, 1998 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Disclosure Statement (8275) and Regulation Disclosure Statement (8275–R).

*OMB Number:* 1545–0889.

*Form Number:* Forms 8275 and 8275–R.

*Abstract:* Internal Revenue Code section 6662 imposes accuracy-related penalties on taxpayers for substantial understatement of tax liability or negligence or disregard of rules and regulations. Code section 6694 imposes similar penalties on return preparers. Regulations sections 1.6662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to a regulation, on Form 8275–R.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions and farms.

*Estimated Number of Responses:* 1,000,000.

*Estimated Time Per Respondent:* 3 hr., 34 min.

*Estimated Total Annual Burden Hours:* 3,560,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 29, 1997.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 97–29173 Filed 11–3–97; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039(f)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** This notice is provided in accordance with IRC section 6039F, as amended, by the Health Insurance Portability and Accountability Act

(HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 6039F) with respect to whom the Secretary received information during the quarter ending September 30, 1997.

| Last name | Middle name | First name |
|---|---|---|
| AIYASAMI | | BALACHANDLER |
| AMGWERD | D | JOSEF |
| AMSTEL | | NIEUWER |
| ARMBRUSTER | MARTIN | KLAUS |
| BAI | HWAN | WILLIAM II |
| BARBER | HUNT | STEPHEN |
| BATRA | BALDEV | PAUL |
| BEARE | | DERRICK |
| BELTRAN | ARTHUR | PAUL |
| BERRIDGE | HERMINE-EVA | CHRISTEL |
| BLUM | DONALD | KENNETH |
| BOGDANOVICH | J | JOSEPH |
| BONNICI | | PATRICIA |
| BYRD | EUNICE | ANDREINA |
| CAAN | MARIA | DURIETTA |
| CALHOUN | KELLY | BRIAN |
| CAMILLERI | SAM | ANGEL |
| CARR | PAULUS | GISLIND |
| CARR | RENALDO | RAYMOND |
| CARTER | LEON | RUSSELL |
| CASEY | MARIE | CYNTHIA |
| CHA | JA | JUNG |
| CHAD | ROBERT | STANLEY |
| CHAMBERS | BYRON | GORDON |
| CHAMPLIN | ALLEN | RAYMOND |
| CHEAH | | SOO-LING |
| CHELEDNIK | HERMANN | HARTMUT |
| CHEN | LIN | YEN-TSENG |
| CHEN | LIN | YEN-TSENG |
| CHEUNG | WING-CHOI | FRANKI |
| CHING | PUI-SUEN | GENEVA |
| CHRONES | PETER | JAMES |
| CHU | | YU |
| CHUNG | | WONHEE |
| CHUNG | | RA ELIZABETH |
| CLAY | THOMAS | WILLIAM |
| CLOPPENBURG | | NINA |
| COLLINS | ADAM | JASON |
| CONNER 3RD | PAUL | WILLIAM |
| CYMOREX | ANDREW | MICHAEL |
| CZAE | AUDREY | SONGWHA |
| DAHL | | MARGRETHE |
| DALOMIAS | C | CECILLIO |
| DANI | | GYULA |
| DART | BRYAN | KENNETH |
| DAVIS | HENRY | PAUL |
| DAVIS | J | LEONARD |
| DEMBO | SAMUEL | RON |
| DOWELL | CLAY | JAMES |
| DRISCOLL | JAMES | MARK |
| DUMAS | RANDOLPH | JAMES |
| EEG-ENRIKSEN | | KAI |
| ELTERMAN | MORRIS | COLIN |
| FARIS | ANNETTE | CAROLE |
| FARIS JR | DALE | GERALD |
| FEININGER | | TOMAS |
| FESTEJO | MILES | PETER |
| FORBES | B. E | CHARLES |
| FRANK | LEE | JAROLD |
| FRIEDMAN | STUART | ROBERT |
| FROESCH | ANDREW | THOMAS |
| FULGHUM | PATRICK | BERNDT |
| GANOTIZI | | DURO |
| GAZIN | LEWIS | CHESTER |
| GESKE | ANITA | RAMONA |
| GETZENDANNER | EDWARDS | MARTIN |
| GILLESPIE | EDWARD | JAMES |
| GIRILLOVITCH | PAUL | VARVARA |
| GLASBEND-GOLD | JAY | ISADOR |
| GOERLICH | | VINCENT |

| Last name | Middle name | First name |
|---|---|---|
| GOLDSMITH | MARKS | MAURICE |
| GOLMOHAMMADI | | HALEH |
| GOUDSMIT | ANN | SARAH |
| GREENE | BASIL | AUDREY |
| GROTJOHANN | WERNER | STEPHEN |
| GUENIN | KIM | HEMMY |
| GUENTHER | RICHARD | WOLFRAM |
| GUTWEIN | PAULA | KUNIGUNDE |
| HALEY | EDITH | MICHELLE |
| HAN | HEI-YOUNG | GRACE |
| HAN | SONHUI | SUSAN |
| HARRIS | CHRISTOPHER | PETER |
| HATTON | KIM | SEHWA |
| HEINTZ | JOSEPH | ROBERT |
| HELLSTROM | OLOF | GUNNAR |
| HENLEY | GRACE | MICHELLE |
| HIGGINS | WINRIA-WAYNE-KEVIN | JOHN |
| HOFFMAN | | MICHAEL |
| HONG | KYU | YOUNG |
| HORRY | MICHAEL | JOHN |
| HU | K | WENDELL |
| HUENNIGER | LYNN | LISA |
| HYDE | CARRIE | DELLA |
| HYON | HUI | KYONG |
| HYUN | GIL | DOON |
| JACKSON | HUI | POK |
| JOHNSON-HAMBLEY | KAY | BONNIE |
| JUN | | GILJA |
| KAE | YOUNG | SUZIE |
| KANG | | DONGSOO |
| KEAT | W | DAVID |
| KIM | AL-RHAN | ELLEN |
| KIM | INSOOK | SUSIE |
| KIM | SANGHYUN | PAUL |
| KIM | KHO | SI-MON |
| KIM | JUNGHO | JONATHAN |
| KIM | M | JENNIFER |
| KIM | SUNG-TAK | BRIAN |
| KIM | RYO | HAI |
| KIM | JAE | DANIEL |
| KIM | | CHOON-WOO |
| KIM | | SOO |
| KIM | YOU | SANG |
| KIM | | DAVID |
| KIM | | JEANNIE |
| KIM | YOUNG | HELEN |
| KIM | JAMES | JIMIN |
| KIM | EUI | JOHN |
| KIM | OK | HYON |
| KINDER | SUN | PYONG |
| KLONARIS | HELEN | KATHRYN |
| KNOWLES | ANN | MARGARET |
| KORPONAY-BALLA | MARIA | MARTA |
| KRAFT | | SIBYL |
| KRAWZOW | | ERICH |
| KWAK | MISON | |
| KWON | | O'DAE |
| LAULA | PAULA | MATHILDE |
| LEE | WING-HONG | VINCENT |
| LEE | HO | SEEK |
| LEE | HEE-BONG | SUSAN |
| LEE | SAN | SANG |
| LEE | | JOON |
| LEE | HUNG | SANG |
| LEE | KU | CHANG |
| LEE | HO | YOUN |
| LEE | KYUN | SANG |
| LEE | | SAM |
| LEE | JUNG-EA | ERICA |
| LEE | RO | WON |
| LESKO | PAUL | CHRISTIAN |
| LEVOY | SUSANNE | CARLIN |
| LEWIS | ERROL | KENNETH |
| LEWIS | ROSE | MARILYN |

| Last name | Middle name | First name |
|---|---|---|
| LI | LAN | WEN |
| LII | | SHENG-YANN |
| LIM | | MICHAEL |
| LIN | | SHOU-HUI |
| LOGAN | JOHANNA | HERTA |
| LUCYK | VERA | SOPHIA |
| LUGO | MARTIN | REINHOLD |
| LUNDBERG | CHRISTER-ERNSTSON | ULF |
| MAASO | HELGE | JAN |
| MAGGE JR. | ANTHONY | JOHN |
| MAHONEY | YOUNG | ANDREW |
| MANKAD | NARENDRA | SHARVARI |
| MANN | KATHERINA | EMMA |
| MARYCZ | ANNE | ELIZABETH |
| MASON JR. | VALENTINE | EDWARD |
| MATHYSEN-GERST | LEONORA | ALEXANDRA |
| MC COLLOUGH | LYNN | SHARON |
| MC EWEN | THERESE | GEORGETTE |
| MCVEEN | HILDEGARD | SANDRA |
| MIAU | HSU | AHCHEN |
| MOON | IM | JUNG |
| MOREL | ANN | LEIGH |
| MORRIS | SUE | DONNA |
| MOULTRIE JR. | | LEROY |
| NADEL | LISE | BARBARA |
| NADEL | | SARAH |
| NAUSSED | | MARGARETE |
| NIASSE | YVETTE | MICHELLE |
| NIENHUYS | JOYCE | DOREEN |
| NISSINEN | KETIE | KERTTU |
| OBERHARDT | BRANDYN | K. |
| OH | WHAN | SEUNG |
| OLEJAK | MARIE | HELGA |
| OLSON | ALAN | RICHARD |
| OR | WAI-HUNG | KENNETH |
| ORTIZ | COLON | ALBERTO |
| ORTIZ | MARIA | ANGELA |
| OYE | JOHAN | EGIL |
| PACKAN | MARIE | HEIDI |
| PAHNKE | HERBERT | HORST |
| PAK | SUK | JAE |
| PARK | HYON | DONG |
| PARK | | JONGSEI |
| PARK | EUN | KEE |
| PARK | OK | HYE |
| PERINCHIEF | NORTON | PETER |
| PIVIN | HENRY | LAURENT |
| POTTS | FREDERICK | FRANCIS |
| POWLES | BIGNOLD | PETER |
| RANDOLPH | F. | HILDEGARD |
| RANSOM | ELLEN | VIRGINIA |
| RASTALL | JOGE | RICHARD |
| REICHERT | | HELEN |
| RIGGS | ROBERT | GEORGE |
| RINGROSE | JANE | JO ANN |
| ROENGOITHYA | | VIPHANDH |
| ROETHLISBERGER | IDA | MARIE |
| ROLFE | DAPINE-ANDREE | KRISTINE |
| ROSE | | SILKE |
| ROUX | PIERRE | DOMINIQUE |
| ROUX | HENRIETTE | VIVIANE |
| SCHMIDT | LOU | MARY |
| SEIDEL | HEINZ | HANS |
| SEINE | SUR | NEUILLY |
| SERAMEK | JEANETTE | DEBORAH |
| SHIM | CHUL | JAE |
| SHIN | JUNG | SU |
| SHIU | HEI | MAN |
| SHORTER | SU | OK |
| SNATIC | EDGAR | HARRY |
| SO | CHONGWAN | JAMES |
| SON | | NICK |
| SRAMEK | | JOSEPH |
| STECHER | FREDERIC | HENRY |

| Last name | Middle name | First name |
|---|---|---|
| STEGMANN | | BERND |
| STE-MARIE | MARIE R | LUMINA |
| STEWART | MARIE | URSULA |
| STRATMANN | LYNN | TAMRA |
| SUTHERLAND | MILNE | DOUGLAS |
| SUTHERLAND | KAY | DORIS |
| TANG-TRICKETT | MUN YIN | JUDY |
| THOUIN | DREW | GUY |
| TIDWELL | FRANKLIN | WILLIAM |
| TO | CHA | KIL |
| TOGAN | ZEHRA | INCI |
| TOJIB | IWAN-PADMAWIDJAJA | OKKY |
| TRIPPE | EDWARD | GEORGE |
| TSAI | MING-CHUNG | DANIEL |
| TSE | CHO-CHE | EDWARD |
| TURNER | MARK | LARRY |
| UNTERLASS | MARIE | ALETA |
| WACZEK-ZAPF | MARY | MARGARET |
| WANG | MINGLONG | ANDREW |
| WEST | MARIA | EVA |
| WEST | ENALDE | MILTON |
| WHEELER | MYRTLE | KRISTIN |
| WHITAKER | ALICIA | CYNTHIA |
| WONG | YU-HONG | PHILIP |
| WOOD | EDWARD | ROBERT |
| YEAGER | EMERSON | JOHN |
| YI | | SUMI |
| YOON | JIN | CHRISTOPHER |
| YOON | ILL | KYUNG |
| YOON | SOOYOUNG | CHARLES |
| YOUNG | J. | ERIC |
| YU | MYUNG | JOUNG |
| YUN | DAVID | HEEDO |
| ZIEGLER | | EVELYN |
| ZIEGLER | REITAN | TOR HAROLD |
| ZUNSTEIN | WILLIAM | MARK |

Approved: October 21, 1997.

**Doug Rogers,**

*Project Manager, International District.*

[FR Doc. 97–29085 Filed 10–31–97; 8:45 am]

**BILLING CODE 4630–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service, Treasury

### Performance Review Board

**AGENCY:** Internal Revenue Service.

**ACTION:** Notice of Members of Senior Executive Service Performance Review Board.

**EFFECTIVE DATE:** Performance Review Board effective October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** DiAnn Kiebler, M:ES, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number)

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Regional Commissioners are as follows:

James Donelson, Chief Compliance Officer

Arthur Gross, Associate Commissioner for Modernization/Chief Information Officer

David Mader, Chief, Management and Administration

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43FR52122).

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 97–29166 Filed 11–3–97; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service, Treasury

### Performance Review Board

**AGENCY:** Internal Revenue Service.

**ACTION:** Notice of Members of Senior Executive Service Performance Review Board.

**EFFECTIVE DATE:** Performance Review Board effective October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** DiAnn Kiebler, M:ES, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service s Senior Executive Service Performance Review Board for senior executives in the National Office are as follows:

James Donelson, Chief Compliance Officer

Herma Hightower, Regional Commissioner, Northeast Region

Arthur Gross, Associate Commissioner for Modernization/Chief Information Officer

David Mader, Chief, Management and Administration

Anthony Musick, Chief Financial Officer

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal**

**Register** for Wednesday, November 8, 1978 (43 FR 52122).

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 97–29167 Filed 11–3–97; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service, Treasury

## Performance Review Board

**AGENCY:** Internal Revenue Service.

**ACTION:** Notice of members of Senior Executive Service Performance Review Board.

**EFFECTIVE DATE:** Performance Review Board effective October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** DiAnn Kiebler, M:ES, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number)

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service s Senior Executive Service Performance Review Board for senior executives in Field Offices are as follows:

Gary Booth, Regional Commissioner, Midstates Region

John Dalrymple, Deputy Chief, Taxpayer Service

Marilyn Day, Regional Commissioner, Western Region

Herma Hightower, Regional Commissioner, Northeast Region

Robert Johnson, Regional Commissioner, Southeast Region

John Ressler, Executive Officer for Service Center Operations

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43FR52122).

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 97–29168 Filed 11–3–97; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service, Treasury

## Performance Review Board

**AGENCY:** Internal Revenue Service.

**ACTION:** Notice of members of Senior Executive Service Performance Review Board.

**EFFECTIVE DATE:** Performance Review Board effective October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** DiAnn Kiebler, M:ES, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Office of the Chief Inspector are as follows:

John Balakos, Associate Inspector General for Program Audits, Department of the Treasury

John Dalrymple, Deputy Chief, Taxpayer Service

Anthony Musick, Chief Financial Officer

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43FR52122).

**Michael P. Dolan,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 97–29169 Filed 11–3–97; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Tuesday
November 4, 1997

Part II

# Office of Management and Budget

**Cancellation Pursuant to Line Item Veto Act; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, and Department of Transportation and Related Agencies Appropriations Act, 1998; Notices**

## OFFICE OF MANAGEMENT AND BUDGET

### Cancellation Pursuant to Line Item Veto Act; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, and Department of Transportation and Related Agencies Appropriations Act, 1998

November 1, 1997.

Two Special Messages from the President under the Line Item Veto Act are published below. The President signed these messages on November 1, 1997. Under the Act, the messages are required to be printed in the **Federal Register** (2 U.S.C. 691a(c)(2)).

**Clarence C. Crawford,**

*Associate Director for Administration.*

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TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998'' (Public Law 105–65; H.R. 2158). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

*William J. Clinton*

THE WHITE HOUSE,
November 1, 1997.

Cancellation No. 97–65

### CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998'' (H.R. 2158).

**1(A). Dollar Amount of Discretionary Budget Authority:** $900 thousand for planning a new national cemetery in Oklahoma City, Oklahoma on page 90 of House Report 105–297, dated October 6, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellations; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellations; and Estimated Effect of Cancellation of Objects, Purposes, and Programs:** This item would provide funding for the design of a new Department of Veterans Affairs (VA) national cemetery at Fort Sill, Oklahoma. The Department just opened one new cemetery and will open four more in the next two years —unprecedented since the Civil War. Activation of these cemeteries is a top priority. As a result of this recent expansion, the FY 1998 President's Budget and VA's Strategic Plan call for no new construction of national cemeteries over the next five years. This will give VA time to assess the adequacy of these new presences and to determine what, if any, further construction is warranted. Should future construction be needed, several other sites would be higher priority than Fort Sill in terms of veterans served. The estimated cost for the first phase of constructing this cemetery is $9.1 million, but $1.0 million a year would be needed for increased operating costs in the system.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal Year: | |
|---|---|
| 1998 | −39 |
| 1999 | −242 |
| 2000 | −292 |
| 2001 | −216 |
| 2002 | −82 |
| Total | −871 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits:**

**Budget authority:** −$900 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Veterans Affairs

**2(A). Bureau:** National Cemetery System

**2(A). Governmental Function/Project (Account):** Veterans Cemetery System (Construction, Major Projects).

**2(B). States and Congressional Districts Affected:** Oklahoma, 4th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Oklahoma: one; 4th District: one.

Cancellation No. 97–66

### CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998'' (H.R. 2158).

**1(A). Dollar Amount of Discretionary Budget Authority:** $15 thousand for an Economic Development Initiative project ''Arab Police Department,'' on page 96 of House Report 105–297, dated October 6, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would develop a multidepartmental police training complex on city property in Arab, Alabama. This project is being canceled because: (1) funding for facilities used in the general conduct of government is not an eligible use of Community Development Block grant funding; and (2) routine police training is considered to be part of the general conduct of government.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay Changes*

[In thousands of dollars]

| Fiscal Year: | |
|---|---|
| 1998 | |
| 1999 | −5 |
| 2000 | −7 |
| 2001 | −2 |
| 2002 | −1 |
| Total | −15 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority: $15 thousand in FY 1998.**

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Housing and Urban Development.

**2(A). Bureau:** Community Planning and Development.

**2(A). Governmental Function/Project (Account):** Economic Development Initiative (Community Development Block Grants).

**2(B). States and Congressional Districts Affected:** Alabama, 4th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Alabama: one; 4th District: one.

Cancellation No. 97–67

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998'' (H.R. 2158).

**1(A). Dollar Amount of Discretionary Budget Authority:** $1,000 thousand for Carter County Chamber of Commerce for trade and development activities on page 99 of the House Report 105–297, dated October 6, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** These funds would be used to provide a grant to the Carter County Chamber of Commerce to search for ways to enhance their economic standing. Carter County plans to increase revenue for the County by examining possible trade and development activities in the region. The project is being canceled because: (1) it was not requested by the President; and (2) promotional and business outreach activities are not eligible uses of Community Development Block Grants.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal Year: | |
|---|---|
| 1998 | −20 |
| 1999 | −340 |
| 2000 | −460 |
| 2001 | −130 |
| 2002 | −40 |
| Total | −990 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$1,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Housing and Urban Development

**2(A). Bureau:** Community Planning and Development

**2(A). Governmental Function/Project (Account):** Economic Development Initiative (Community Development Block Grants).

**2(B). States and Congressional Districts Affected:** Montana, At large.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Montana: three.

Cancellation No. 97–68

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998'' (H.R. 2158).

**1(A). Dollar Amount of Discretionary Budget Authority:** $600 thousand for a Solar Aquatic Wastewater Treatment Demonstration Project on page 117 of House Report 105–297, dated October 6, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** Solar Aquatic Wastewater Treatment is a demonstration project of an alternative wastewater treatment approach. The Congress has earmarked a total of $7.2 million from FY 1992 to FY 1997 to fund this project. In Senate Report 104–318 dated July 11, 1996, the Senate Committee on Appropriations notes that the ''solar aquatic wastewater treatment demonstration projects have received funding for several years''. The Report further directs EPA to report on (1) what has been achieved, (2) the viability of applying this technology widely, (3) an assessment of the costs and benefits, and (4) the amount of future Federal funding required. EPA's report, which was sent to the Congress on April 30, 1997, concludes that the project ''has not yet demonstrated reliable attainment of all of its process goals''. The project ''does not appear to offer any economic advantages over conventional technologies, and appears to be clearly more costly than conventional processes at flow rates more than 100,000 gallons per day. In view of these conclusions, the continuation of Federal funding support for these demonstration projects is not warranted.''

This project is being canceled because it: (1) was not requested in the President's FY 1998 Budget; (2) is earmarked for a specific project, thereby avoiding prioritization against other environmental research needs or be competitively awarded; and (3) has been evaluated by EPA, at the request of Congress, and found to not warrant additional funding.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal Year: | |
|---|---|
| 1998 | −168 |
| 1999 | −312 |
| 2000 | −96 |
| 2001 | −18 |
| 2002 | −6 |
| Total | −600 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$600 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Environmental Protection Agency.

**2(A). Bureau:** N/A.

**2(A). Governmental Function/Project (Account):** Wastewater Treatment Demonstration (Environmental Programs and Management).

**2(B). States and Congressional Districts Affected:** Vermont, At large.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Vermont: one.

Cancellation No. 97–69

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998'' (H.R. 2158).

**1(A). Dollar Amount of Discretionary Budget Authority:** $1,000 thousand for the Alabama Water and Wastewater Institute on page 117 of House Report 105–297, dated October 6, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The Alabama Water and Wastewater Institute is a collective of personnel from 13 or 14 wastewater treatment plants in Alabama. In FY 1997, they received an earmark of $200,000 to conduct on-site operator training over a three year period. The $1 million earmark for FY 1998 is to be given to the Alabama Department of Environmental Management to build a central facility for the Institute in Montgomery, Alabama in which to conduct both wastewater and drinking water operator training. This project is being canceled because: (1) it was not requested in the President's FY 1998 Budget; (2) it is earmarked for a specific activity, thereby avoiding prioritization against other environmental needs; (3) it is earmarked to a specific group, avoiding competitive evaluation; and (4) construction of non-Federal buildings is outside the scope of EPA's mission and an extraordinary use of the Agency's authority.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal Year: | |
|---|---|
| 1998 | –280 |
| 1999 | –520 |
| 2000 | –160 |
| 2001 | –30 |
| 2002 | –10 |
| Total | –1,000 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** –$1,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Environmental Protection Agency.

**2(A). Bureau:** N/A.

**2(A). Governmental Function/Project (Account):** Construction of Training Facility (Environmental Programs and Management).

**2(B). States and Congressional Districts Affected:** Alabama, 2nd and 7th Congressional Districts.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Alabama: two; 2nd District: one; 7th District: one.

Cancellation No. 97–70

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998'' (H.R. 2158).

**1(A). Dollar Amount of Discretionary Budget Authority:** $500 thousand for McConnellsburg, Pennsylvania Wastewater and Drinking Water System Needs on page 124 of House Report 105–297, dated October 6, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This project would provide $500,000 to fund new water and sewer lines to a new industrial park in Ayr Township. As a by-product of constructing the water and sewer lines for the industrial park, it would also provide the potential for a limited number of residences with existing working wells and septic systems to be hooked up to the central water and sewer systems. The project is being canceled because: (1) it was not requested in the FY 1998 President's Budget; (2) it primarily provides benefits to a private entity; (3) the water line funding is outside the scope of EPA's usual mission; (4) the sewer line funding is outside the normal process for allocating funds to States who determine the environmental priority of projects, and (5) it is a low priority use of environmental funds primarily intended to help municipalities pay for Clean Water and Safe Drinking Water Act requirements.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal Year: | |
|---|---|
| 1998 | −20 |
| 1999 | −100 |
| 2000 | −150 |
| 2001 | −100 |
| 2002 | −50 |
| Total | −420 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** $500 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would

occur at levels that are reduced by the amounts above.

**2(A). Agency:** Environmental Protection Agency.

**2(A). Bureau:** N/A.

**2(A). Governmental Function/Project (Account):** Wastewater and Drinking Water Infrastructure (State and Tribal Assistance Grants).

**2(B). States and Congressional Districts Affected:** Pennsylvania, 9th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Pennsylvania: five; 9th District: one.

Cancellation No. 97–71

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998'' (H.R. 2158).

**1(A). Dollar Amount of Discretionary Budget Authority:** $10,000 thousand for optical astronomy testbeds on page 131 of House Report 105–297, dated October 6, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This line item includes two optical telescope projects, neither of which is appropriate for NASA to fund. Both projects are augmentations of ground-based, optical telescopes—one in Arizona, and one in Chile. The Arizona project, at the Steward Observatory at the University of Arizona, Tucson, duplicates of an on-going project at the Keck Observatory in Mauna Kea, Hawaii—a project in which NASA shares funding. While the Arizona experiment could enable a space-based, NASA facility in the future, similar to that being pursued at Keck, the Keck project, due to its configuration, would produce technical results superior to those of the Arizona project. Given that NASA is already investing in a superior capability in the Keck II facility, NASA should not fund the Arizona project.

The Chile project is not within NASA's mission, since the project has no implications for space-based astronomy—the only type of astronomy within NASA's mission. NASA engages in ground-based astronomy only if such activities enable future, space-based missions.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| | |
|---|---|
| Fiscal Year: | |
| 1998 | −3,600 |
| 1999 | −5,500 |
| 2000 | −900 |
| 2001. | |
| 2002. | |
| Total | −10,000 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$10,000 thousand.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** National Aeronautics and Space Administration.

**2(A). Bureau: N/A**

**2(A). Governmental Function/Project (Account):** Science (Science, Aeronautics and Technology).

**2(B). States and Congressional Districts Affected:** Arizona, 5th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District Identified Above:** Arizona: two; 5th District: two.

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TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Department of Transportation and Related Agencies Appropriations Act, 1998'' (Public Law 105–66; H.R. 2169). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

*William J. Clinton*

THE WHITE HOUSE,
November 1, 1997.

Cancellation No. 97–72

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Transportation and Related Agencies Appropriations Act, 1998'' (H.R. 2169).

**1(A). Dollar Amount of Discretionary Budget Authority:** $5,280 thousand for improvements to Seward dock on page 72 of House Report 105–313, dated October 7, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** Senate Report 105–55 provided $7,000,000 funding to ''be utilized to expand and improve the Seward Dock, the southernmost terminus of the [Alaska] railroad and an important intermodal transfer point on the Alaska Marine Highway System. The State of Alaska, the city of Seward, the Alaska Railroad, and cruise ship lines that utilize the port will provide significant cost-share funding toward completion of the project this fiscal year.''

The Conference Report, House Report 105–313 ''reduced the amount for improvements to the Seward dock from $7,000,000 in the Senate bill to $5,280,000. Such reduction will result in increased local participation in the project, particularly by the city of Seward. Therefore, the conferees direct the department to provide funding for the dock improvements directly to the city to complete the intermodal improvements on behalf of the Alaska Railroad.''

The Alaska Railroad, a state owned railroad, owns the Seward dock and certain surrounding port facilities. The dock was built by the Federal government following the 1964 Alaska earthquake and was designed to handle conventional and containerized cargo, logs, petroleum, and steel and serves as a cruise ship terminal.

The funding would rehabilitate the current dock, dredge, relocate a fishery dock, pave adjacent areas, build a new bulkhead on the current dock, and improve facilities for passenger movement off the docks. The enhanced dock would be able to handle additional freight and passenger ship capacity. The

total project cost is over $8 million. The balance of the project costs not covered by this appropriation would be financed by the City and the Alaska Railroad.

The project is being canceled for the following reasons:

1. The Federal Railroad Administration is charged with overseeing the safety of the Nation's railroads. This project is primarily an economic development project which, while involving a railroad, will primarily benefit to the City of Seward, the State of Alaska and private cargo haulers and passenger ships. Funding of such mixed-use projects would set an unfortunate precedent for spending Federal Railroad Administration funding.

2. The Senate and Conference reports do not cite any independent investment analysis concerning the potential return of the project. No analysis has been done to quantify the safety or economic benefits of this project.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

(In thousands of dollars)

| Fiscal Year: | |
|---|---|
| 1998 | −2,112 |
| 1999 | −3,168 |
| 2000 | ..... |
| 2001 | ..... |
| 2002 | ..... |
| Total | −5,280 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$5,280 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Transportation.

**2(A). Bureau:** Federal Railroad Administration.

**2(A). Governmental Function/Project (Account):** Seward Dock (Alaska Railroad Rehabilitation).

**2(B). States and Congressional Districts Affected:** Alaska, At Large.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Alaska: two.

Cancellation No. 97–73

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Transportation and Related Agencies Appropriations Act, 1998'' (H.R. 2169).

**1(A). Dollar Amount of Discretionary Budget Authority:** $500 thousand for an Electronic Distribution Center for Surplus Transit-Related Equipment on page 75 of House Report 105–313, dated October 7, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** This item provides funds to private companies for start up costs associated with an electronic ''bulletin board'' service for surplus transit equipment. The companies involved have indicated that they have a proprietary package that could be used for transit, and would sell subscriptions to fund ongoing operating costs. The merits of this proposal and need for this service have not been demonstrated. It is inappropriate to use federal funds to assist private companies that are not serving a demonstrated, well-defined public need.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal Year | |
|---|---|
| 1998 | −100 |
| 1999 | −150 |
| 2000 | −100 |
| 2001 | −100 |
| 2002 | −50 |
| Total | −500 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$500 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Transportation.

**2(A). Bureau:** Federal Transit Administration.

**2(A). Governmental Function/Project (Account):** Transit Research and Development (Transit Planning and Research).

**2(B). States and Congressional Districts Affected:** Georgia, 3rd Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Georgia: two; 3rd District: one.

Cancellation No. 97–74

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Department of Transportation and Related Agencies Appropriations Act, 1998'' (H.R. 2169).

**1(A). Dollar Amount of Discretionary Budget Authority:** $450 thousand for a transportation emergency preparedness and response demonstration project and evaluation on page 84 of House Report 105–313, dated October 7, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The majority of the earmarked funds ($400 thousand) would be used to assist in the establishment of an underground emergency transportation management center utilizing satellite communications. The center (to be located in Arab, Alabama) would be used by local, State and Federal emergency management agencies to coordinate assistance during emergency situations and as a disaster field office to coordinate long-term recovery programs. The remaining funds ($50 thousand) would be used: (1) to evaluate and report on the demonstration project in order to share information with other communities to help them to improve their emergency preparedness and

response capabilities; and (2) to support administrative expenses incurred by the Department in carrying out the demonstration project. This project is being canceled for several reasons. The first is that the project is outside the scope of the Department's mission. Second, even if the funds were earmarked in a more appropriate agency, the project would not merit funding. Alabama already has an Emergency Operations Center (EOC) that serves the entire State. This EOC was built just five years ago, with half of the cost funded by the Federal Government. An additional emergency response center in Arab or elsewhere in the State would be duplicative and unnecessary. Third, a disaster field office is typically established at a central point within the disaster area. A disaster field office at a fixed location such as Arab may not always provide a desirable point from which to carry out long-term recovery efforts.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal Year: | |
|---|---|
| 1998 | −306 |
| 1999 | −144 |
| 2000 | ..... |
| 2001 | ..... |
| 2002 | ..... |
| Total | −450 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$450 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Transportation.

**2(A). Bureau:** Research and Special Programs Administration.

**2(A). Governmental Function/Project (Account):** Emergency Preparedness and Response (Research and Special Programs).

**2(B). States and Congressional Districts Affected:** Alabama, 4th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Alabama: three; 4th District: two.

[FR Doc. 97–29340 Filed 11–3–97; 10:20 am]

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