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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AF25

Amendment to the Production Flexibility Contract Regulations; Extension of Comment Period

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments; extension of the comment period.

SUMMARY: In the interim rule published in the **Federal Register** on October 23, 1997, (62 FR 55150), comments were requested by November 24, 1997. Interested parties have requested that the comment period be extended to provide additional time for comments.

DATE: This rule was effective on October 23, 1997. Comments on this rule must be received on or before December 1, 1997, to be assured of consideration.

ADDRESSES: Please submit written comments to Scotty M. Abbott, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517.

FOR FURTHER INFORMATION CONTACT: Scotty M. Abbott, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone 202–720–5422; Internet address: Sabbott@wdc.fsa.usda.gov.

Signed at Washington DC, on November 24, 1997.

Bruce R. Weber,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–31382 Filed 11–28–97; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0960]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to Regulation Z. The revisions implement an amendment to the Truth in Lending Act contained in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 affecting the disclosure of a fifteen-year historical example of rates and payments. The amendment applies to variable-rate loans with a term exceeding one year and secured by the consumer's principal dwelling. The amendment allows creditors to provide a statement that the periodic payment may substantially increase or decrease together with a maximum interest rate and payment based on a $10,000 loan amount, in lieu of having to provide a fifteen-year historical example of index values.

DATES: *Effective date:* This rule is effective November 21, 1997. *Compliance date:* Compliance is optional until October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only,* contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA) (15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226).

The credit transactions covered by TILA and Regulation Z fall into two categories—open- or closed-end credit transactions. Open-end credit is defined as a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge that may be computed from time to time on the outstanding unpaid balance, for example, credit extended by means of a credit card (§ 226.2(a)(20)). Closed-end credit is defined as any credit arrangement that does not fall within the definition of open-end credit (§ 226.2(a)(10)). A mortgage loan with a fixed maturity date is an example of closed-end credit.

II. Regulatory Provisions

Under Regulation Z, the timing and number of disclosures required for variable-rate loans vary depending on the term and security for the loan. For all variable-rate loans, disclosures are generally provided once—prior to consummation. However, if the loan exceeds a term of one year and is secured by the consumer's principal dwelling, creditors are required to provide disclosures at different times—a loan program disclosure when an application is received (or when a nonrefundable fee is paid, whichever occurs earlier), transaction-specific Truth in Lending disclosures prior to consummation, and disclosures subsequent to consummation when certain rate or payment changes occur. (*See* Regulation Z, 12 CFR 226.17(b), 18(f), 19, and 20(c).)

Disclosures provided at application for a variable-rate mortgage include the Board-prescribed *Consumer Handbook on Adjustable Rate Mortgages* (or a comparable substitute) and a loan program disclosure for each variable-rate program in which the consumer has expressed interest. The loan program disclosure consists of twelve separate items, including information such as the identification of the index or formula to be used for adjustments and a fifteen-year historical example of how changes in the index values or formula used to compute interest rates would have affected the interest rates and payments on a $10,000 loan.

On September 30, 1996, the Economic Growth and Regulatory Paperwork

Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) (1996 amendment) amended the TILA by providing creditors the option to give a statement that the periodic payments may increase or decrease substantially together with the maximum interest rate and payment amount for a $10,000 loan amount in lieu of having to give the fifteen-year historical example.

The Board issued a proposal in January 1997 (62 FR 5183, Feb. 4, 1997). Sixty-nine comments were received. Based on comments and further analysis, the Board has adopted a final rule that implements the statutory changes. The final rule is discussed in detail in the section-by-section analysis below.

III. Section-by-Section Analysis

Subpart A—General

Section 226.19—Certain Residential Mortgage Transactions

19(b) Certain variable-rate transactions. Section 226.19(b) requires the historical example disclosure for loans exceeding a term of one year that are secured by a consumer's principal dwelling and in which the APR may increase after consummation (such as when the rate is tied to an index). The 1996 amendment refers to ''residential mortgage transactions'' to identify when the alternative disclosure option is available, but does not explicitly limit application of the alternative disclosure to loans that exceed a term of one year. ''Residential mortgage transaction'' is defined in Regulation Z (§ 226.2(a)(24)) as credit secured by the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling. Under this definition, the alternative disclosure option would not extend to refinance and second-mortgage transactions. The Board believes that the amendment was intended to apply to loans where the fifteen-year historical example is currently required, namely loans that exceed one year and are secured by the consumer's principal dwelling. Accordingly, the Board proposed to apply the alternative disclosure option to variable-rate loans with a term greater than one year and secured by the consumer's principal dwelling.

The majority of commenters strongly supported the Board's proposal to apply the amendment to loans where the fifteen-year historical example is currently required. Those commenters stated that an interpretation to apply the amendment only to ''residential mortgage transactions''—primarily purchase-money mortgages—would result in increased regulatory burden on creditors by requiring two sets of disclosures.

The Board believes that the Congress did not intend to limit the flexibility in the 1996 amendment to purchase-money transactions nor to apply the provision to loans that do not currently require the historical example. The Board believes that the Congress intended to provide this option to all credit transactions secured by the consumer's principal dwelling, given that the committee report to the 1996 amendment broadly states the alternative disclosure option would be available to lenders in consumer credit transactions under closed-end plans. Pursuant to its authority under section 105(a) of the TILA, the Board has adopted a final rule that makes the alternative disclosure option available for any close-end credit transactions where the term exceeds one year and is secured by the consumer's dwelling. Section 105(a) provides that the Board's regulations ''may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of [the TILA], to prevent circumvention or evasion thereof, or to facilitate compliance therewith.''

Paragraph 19(b)(2)(viii) currently sets forth the required historical example based on a $10,000 loan amount and paragraph 19(b)(2)(x) the required disclosure of the maximum interest rate and payment for a $10,000 loan amount. The proposal revised paragraph 19(b)(2)(viii) to set forth the historical example requirements in paragraph 19(b)(2)(viii)(A); and incorporated the substance of paragraph 19(b)(2)(x) on the maximum interest rate and payment disclosure in paragraph 19(b)(2)(viii)(B). If the creditor chose to disclose the maximum interest rate and payment in lieu of a historical example, a statement that the periodic payment may increase or decrease substantially must accompany the rate and payment amount. The proposal provided that the statement requirement may be satisfied by providing the disclosure required by paragraph 19(b)(2)(vi) that states, for example, ''your monthly payment can increase or decrease substantially based on annual changes in the interest rate.''

A question was raised about whether the proposed wording would allow creditors to provide both the historical example and the maximum interest rate and payment. The Board believes that the 1996 amendment allows creditors to substitute the maximum interest rate and payment for the historical example or to provide both disclosures. The commentary to paragraph 19(b)(2)(viii) has been revised accordingly. The commentary to paragraph 19(b)(2)(viii)(B) provides that the statement that must accompany the maximum rate and payment disclosure is not separately required if a similar disclosure is made pursuant to the requirement in paragraph 19(b)(2)(vi).

Regulation Z currently requires creditors to disclose a maximum interest rate using the most recent interest rate shown in the historical example. Because creditors are not required to provide the historical example under the 1996 amendments, creditors instead must use a ''recent'' interest rate as determined by the Board. The Board proposed to require creditors to calculate the maximum rate and payment based on an initial rate that was in effect within one year of the disclosure. A more frequent basis for updating the index or formula would place greater burden on creditors than currently exists under the regulation, whereas the Congress intended to reduce burden with the alternative. The Board solicited comment on whether there are circumstances in which the consumer benefit from updating the initial interest rate more frequently than annually would outweigh the compliance burden of producing the disclosures more frequently.

The majority of the commenters supported the proposal to base the maximum rate and payment on an interest rate in effect within one year of the disclosure. They believed that this was consistent with the current requirement regarding revisions to the historical example. Several commenters observed, however, that the proposed language would require creditors to update the maximum rate and payment twice a year and suggested adopting one of the timing rules already applicable to variable-rate transactions under § 226.19(b)(2). For example, the timing rules for revising the loan program disclosure in comment 19(b)(2)–5 permit creditors to update once a year, as soon as reasonably possible after the new index value becomes available. Similarly, comments 19(b)(2)(viii)–3 and –4 allow disclosures to use a margin or discount or premium used during the six months preceding preparation of the disclosures. Based on these comments and further analysis, the staff has revised the draft rule for determining the initial interest rate that will be used for the maximum rate and payment disclosure; it defines the initial interest rate as one in effect as of an identified month and year for the particular loan program. The final rule eliminates any

requirement for creditors to update the maximum rate and payment disclosure more frequently than the loan program disclosure.

Commenters asked for clarification on whether the amount of a recent discount or premium is reflected in the alternative disclosure. Several commenters requested general clarification on how the initial rate was derived. Several commenters also suggested that all references to ''the most recent rate'' be deleted since it implies that creditors must continually update the information. Several commenters questioned whether an explanation of how the consumer may calculate the payments for the loan amount to be borrowed would be required absent the historical example.

Based on comments and further analysis, the Board believes that the initial and maximum interest rates and payments should reflect any offered discount or premium in order to reduce consumer confusion. References to ''the most recent rate'' have been deleted and replaced by ''initial interest rate.'' A definition of the ''initial interest rate'' is provided and clarifies that it is based on the index plus margin, adjusted by the amount of any discount or premium.

Since the maximum rate and payment is based on a $10,000 loan amount, the Board believes that an explanation on how to calculate the payments for another loan amount would allow consumers to better understand the relationship of the maximum rate and payment disclosure to their particular transaction without placing undue burden on the creditors. Section 226.19(b)(2)(ix) has been revised to require the explanation under either alternative.

Appendix H to Part 226—Closed-end Model Forms and Clauses

The sample clauses and model forms to appendix H–4 and H–14 have been revised in response to comments.

Supplement I—Official Staff Interpretation

Revisions have been made to the Official Staff Commentary to conform with the amendments to Regulation Z.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the amendments to Regulation Z. Overall, the amendments are not expected to have any significant impact on small entities. The regulatory revisions required to implement the 1996 amendment reduce the number of disclosures required for variable-rate mortgages and ease compliance by providing creditors with the option of disclosing either a fifteen-year historical example or a maximum payment example.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. 5 CFR part 1320, Appendix A.1.

The respondents are individuals or businesses that regularly offer or extend consumer credit. The purpose of the TILA and Regulation Z is to promote the informed use of consumer credit by requiring creditors to disclose its terms and cost. Records must be retained by creditors for 24 months. The disclosure requirements revised by this final rule are found in 12 CFR 226.19 and part 226, appendix H.

The Board's Regulation Z applies to all types of creditors, not just state member banks. For purposes of the Paperwork Reduction Act, however, the Federal Reserve accounts for the paperwork burden associated with Regulation Z disclosures only for state member banks. The estimates of paperwork burden for institutions other than state member banks are provided by the federal agency or agencies that supervise those lenders.

The final rule is expected to decrease the ongoing annual burden of Regulation Z. There are 1,014 state member banks, making an estimated 5,750 closed-end credit disclosures each year on average, at 6.5 minutes per disclosure. The proportion of such loans that are mortgages with an adjustable rate is estimated to be small. It is estimated that the combined annual burden for state member banks under Regulation Z will decrease by approximately 10,000 burden hours to an average 6.4 minutes per disclosure. The Federal Reserve estimates an associated start-up cost of $160 per respondent to replace the fifteen-year historical example with the maximum rate and payment example. No comments specifically addressing the burden estimate were received.

The disclosures made by creditors to consumers under Regulation Z are mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Disclosures relating to specific transactions or accounts are not publicly available.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for Regulation Z is 7100–0199.

The Federal Reserve has a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden. Comments may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.19 is amended by:

a. Republishing the introductory text of paragraph (b)(2);

b. Revising paragraph (b)(2)(viii);

c. Revising paragraph (b)(2)(ix);

d. Removing paragraph (b)(2)(x); and

e. Paragraphs (b)(2)(xi), (b)(2)(xii), and (b)(2)(xiii) are redesignated as paragraphs (b)(2)(x), (b)(2)(xi) and (b)(2)(xii) respectively.

The revisions read as follows:

§ 226.19 Certain residential mortgage and variable-rate transactions.

* * * * *

(b) Certain variable-rate transactions. * * *

* * * * *

(2) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

* * * * *

(viii) At the option of the creditor, either of the following:

(A) A historical example, based on a $10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program disclosure. The example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan

program terms, such as negative amortization, interest rate carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(B) The maximum interest rate and payment for a $10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either:

(A) The most recent payment shown in the historical example in paragraph (b)(2)(viii)(A) of this section; or

(B) The initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(viii)(B) of this section.

* * * * *

3. In part 226, Appendix H is amended by revising the appendix heading, H–4(C) Variable-Rate Model Clauses, and H–14 Variable-Rate Mortgage Sample to read as follows:

Appendix H to Part 226—Closed-end Model Forms and Clauses

* * * * *

H–4(C)—Variable-Rate Model Clauses

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment Are Determined

- Your interest rate will be based on [an index plus a margin] [a formula].
- Your payment will be based on the interest rate, loan balance, and loan term.

—[The interest rate will be based on (identification of index) plus our margin. Ask for our current interest rate and margin.]

—[The interest rate will be based on (identification of formula). Ask us for our current interest rate.]

—Information about the index [formula for rate adjustments] is published [can be found] _____.

—[The initial interest rate is not based on the (index) (formula) used to make later adjustments. Ask us for the amount of current interest rate discounts.]

How Your Interest Rate Can Change

- Your interest rate can change (frequency).
- [Your interest rate cannot increase or decrease more than _____ percentage points at each adjustment.]
- Your interest rate cannot increase [or decrease] more than _____ percentage points over the term of the loan.

How Your Payment Can Change

- Your payment can change (frequency) based on changes in the interest rate.
- [Your payment cannot increase more than (amount or percentage) at each adjustment.]
- You will be notified in writing _____ days before the due date of a payment at a new level. This notice will contain information about your interest rates, payment amount, and loan balance.
- [You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain information about your interest rates, payment amount, and loan balance.]
- [For example, on a $10,000 [term] loan with an initial interest rate of _____ [(the rate shown in the interest rate column below for the year 19 _____)] [(in effect (month) (year)], the maximum amount that the interest rate can rise under this program is _____ percentage points, to _____%, and the monthly payment can rise from a first-year payment of $_____ to a maximum of $_____ in the _____ year. To see what your payments would be, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000 ÷ $10,000 = 6; 6 × _____ = $_____ per month.)]

Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future.

The example is based on the following assumptions:

Amount	$10,000
Term	_____
Change date	_____
Payment adjustment	(frequency)
Interest adjustment	(frequency)
[Margin]*	_____
Caps _____ [periodic interest rate cap]	
_____ [lifetime interest rate cap	
_____ [payment cap]	
[Interest rate carryover]	
[Negative amortization]	
[Interest rate discount]**	
Index.....(identification of index or formula)	

* This is a margin we have used recently, your margin may be different.

** This is the amount of a discount we have provided recently; your loan may be discounted by a different amount.]

Year	Index (%)	Margin (Percentage points)	Interest Rate (%)	Monthly Payment ($)	Remaining Balance ($)
1982					
1983					
1984					
1985					
1986					
1987					
1988					
1989					
1990					
1991					
1992					
1993					
1994					
1995					
1996					

Note: To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1982 would be: $60,000÷$10,000=6; 6×_____=$_____ per month.)

* * * * *

H–14—Variable-Rate Mortgage Sample

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment Are Determined

• Your interest rate will be based on an index rate plus a margin.

• Your payment will be based on the interest rate, loan balance, and loan term.

—The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.

—Information about the index rate is published weekly in the Wall Street Journal.

• Your interest rate will equal the index rate plus our margin unless your interest rate ''caps'' limit the amount of change in the interest rate.

How Your Interest Rate Can Change

• Your interest rate can change yearly.

• Your interest rate cannot increase or decrease more than 2 percentage points per year.

• Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

How Your Monthly Payment Can Change

• Your monthly payment can increase or decrease substantially based on annual changes in the interest rate.

• [For example, on a $10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is 5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of $106.03 to a maximum of $145.34 in the fourth year. To see what your payment is, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000÷$10,000=6; 6×106.03=$636.18 per month.)

• You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount and loan balance.]

[Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:

Amount	$10,000
Term	30 years
Payment adjustment	1 year
Interest adjustment	1 year
Margin	3 percentage points

Caps_____ 2 percentage points annual interest rate

_____ 5 percentage points lifetime interest rate

Index_____ Weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year.

Year (as of 1st week ending in July)	Index (%)	Margin* (percentage points)	Interest Rate (%)	Monthly Payment ($)	Remaining Balance ($)
1982	14.41	3	17.41	145.90	9,989.37
1983	9.78	3	**15.41	129.81	9,969.66
1984	12.17	3	15.17	127.91	9,945.51
1985	7.66	3	**13.17	112.43	9,903.70
1986	6.36	3	***12.41	106.73	9,848.94
1987	6.71	3	***12.41	106.73	9,786.98
1988	7.52	3	***12.41	106.73	9,716.88
1989	7.97	3	**12.41	106.73	9,637.56
1990	8.06	3	***12.41	106.73	9,547.83
1991	6.40	3	***12.41	106.73	9,446.29
1992	3.96	3	***12.41	106.73	9,331.56
1993	3.42	3	***12.41	106.73	9,201.61
1994	5.47	3	***12.41	106.73	9,054.72
1995	5.53	3	***12.41	106.73	8,888.52
1996	5.82	3	***12.41	106.73	8,700.37

*This is a margin we have used recently; your margin may be different.
**This interest rate reflects a 2 percentage point annual interest rate cap.
***This interest rate reflects a 5 percentage point lifetime interest rate cap.
Note: To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1982 would be: $60,000÷$10,000=6; 6×$106.73=$640.38.)

• You will be notified in writing 25 days before the annual payment adjustment may be made. This notice will contain information about your interest rates, payment amount and loan balance.]

* * * * *

4. In Supplement I to Part 226, under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions,* under paragraph *19(b) Certain variable-rate transactions,* the following amendments are made:

a. Paragraph 2, under the heading *''Paragraph 19(b)(2)''*, is revised.

b. Paragraph 1, under the heading *''Paragraph 19(b)(2)(v)''*, is revised.

c. The heading *''Paragraph 19(b)(2)(viii)''* is revised to read *''Paragraph 19(b)(2)(viii)(A)''*.

d. A new heading *''Paragraph 19(b)(2)(viii)''* and a new paragraph 1 is added below the new heading, and both are transferred immediately preceding *''Paragraph 19(b)(2)(viii)(A).''*

e. The heading *''Paragraph 19(b)(2)(x)''* is revised to read *''Paragraph 19(b)(2)(viii)(B)''* and the paragraph heading and text are transferred immediately preceding the heading ''Paragraph 19(b)(2)(ix).''

f. Paragraphs 1 and 2, under the heading *''Paragraph 19(b)(2)(viii)(B)''* are revised and a new paragraph 5 is added.

g. Paragraph 1, under the heading *''Paragraph 19(b)(2)(ix)''* is revised.

h. The heading *''Paragraph 19(b)(2)(xi)''* is revised to read *''Paragraph 19(b)(2)(x).''*

i. The heading *''Paragraph 19(b)(2)(xii)''* is revised to read *''Paragraph 19(b)(2)(xi).''*

j. The heading *''Paragraph 19(b)(2)(xiii)''* is revised to read *''Paragraph 19(b)(2)(xii).''*

The revisions and additions read as follows:

Supplement 1 to Part 226—Official Staff Interpretations

* * * * *

Section 226.19—Certain Residential Mortgage Transactions.

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

Paragraph 19(b)(2).

* * * * *

2. *Variable-rate loan program defined.* i. Generally, if the identification, the presence or absence, or the exact value of a loan feature must be disclosed under this section, variable-rate loans that differ as to such features constitute separate loan programs. For example, separate loan programs would exist based on differences in any of the following loan features:

A. The index or other formula used to calculate interest rate adjustments.

B. The rules relating to changes in the index value, interest rate, payments, and loan balance.

C. The presence or absence of, and the amount of, rate or payment caps.

D. The presence of a demand feature.

E. The possibility of negative amortization.

F. The possibility of interest rate carryover.

G. The frequency of interest rate and payment adjustments.

H. The presence of a discount feature.

I. In addition, if a loan feature must be taken into account in preparing the disclosures required by § 226.19(b)(2)(viii), variable-rate loans that differ as to that feature constitute separate programs under § 226.19(b)(2).

ii. If, however, a representative value may be given for a loan feature or the feature need not be disclosed under § 226.19(b)(2), variable-rate loans that differ as to such features do not constitute separate loan programs. For example, separate programs would not exist based on differences in the following loan features:

A. The amount of a discount.

B. The amount of a margin.

* * * * *

Paragraph 19(b)(2)(v).

1. *Discounted and premium interest rate.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. If the initial interest rate will be a discount or a premium rate, creditors must alert the consumer to this fact. For example, if a creditor discounted a consumer's initial rate, the disclosure might state, ''Your initial interest rate is not based on the index used to make later adjustments.'' (See the commentary to § 226.17(c)(1) for a further discussion of discounted and premium variable-rate transactions.) In addition, the disclosure must suggest that consumers inquire about the amount that the program is currently discounted. For example, the disclosure might state, ''Ask us for the amount our adjustable rate mortgages are currently discounted.'' In a transaction with a consumer buydown or with a third-party buydown that will be incorporated in the legal obligation, the creditor should disclose the program as a discounted variable-rate transaction, but need not disclose additional information regarding the buydown in its program disclosures. (See the commentary to § 226.19(b)(2)(viii) for a discussion of how to reflect the discount or premium in the historical example or the maximum rate and payment disclosure).

* * * * *

Paragraph 19(b)(2)(viii).

1. *Historical example and initial and maximum interest rates and payments.* A creditor may disclose both the historical example and the initial and maximum interest rates and payments.

Paragraph 19(b)(2)(viii)(A).

* * * * *

Paragraph 19(b)(2)(viii)(B).

1. *Initial and maximum interest rates and payments.* The disclosure form must state the initial and maximum interest rates and payments for a $10,000 loan originated at an initial interest rate (index value plus margin adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure. (See comment 19(b)(2)–5 on revisions to the loan program disclosure.) In calculating the maximum payment under this paragraph, a creditor should assume that the interest rate increases as rapidly as possible under the loan program, and the maximum payment disclosed should reflect the amortization of the loan during this period. Thus, in a loan with 2 percentage point annual (and 5 percentage point overall) interest rate limitations or ''caps,'' the maximum interest rate would be 5 percentage points higher than the initial interest rate disclosed. Moreover, the loan would not reach the maximum interest rate until the fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed would reflect the amortization of the loan during this period. If the loan program includes a discounted or premium initial interest rate, the initial interest rate should be adjusted by the amount of the discount or premium.

2. *Term of the loan.* In calculating the initial and maximum payments, the creditor need not base the disclosures on each term to maturity or payment amortization offered under the program. Instead, the creditor may follow the rules set out in comment 19(b)(2)(viii)(A)–5.

If a historical example is provided under § 226.19(b)(2)(viii)(A), the terms to maturity or payment amortization used in the historical example must be used in calculating the initial and maximum payment. In addition, creditors must state the term or payment amortization used in making the disclosures under this section.

* * * * *

5. *Periodic payment statement.* The statement that the periodic payment may increase or decrease substantially may be satisfied by the disclosure in paragraph 19(b)(2)(vi) if it states for example, ''your monthly payment can increase or decrease substantially based on annual changes in the interest rate.''

Paragraph 19(b)(2)(ix).

1. *Calculation of payments.* A creditor is required to include a statement on the disclosure form that explains how a consumer may calculate his or her actual monthly payments for a loan amount other than $10,000. The example should be based upon the most recent payment shown in the historical example or upon the initial interest rate reflected in the maximum rate and payment disclosure. In transactions in which the latest payment shown in the historical example is not for the latest year of index values shown (such as in a five-year loan), a creditor may provide additional examples based on the initial and maximum payments disclosed under § 226.19(b)(2)(viii)(B). The creditor, however, is not required to calculate the consumer's payments. (See the model clauses in appendix H–4(C).)

Paragraph 19(b)(2)(x).

* * * * *

Paragraph 19(b)(2)(xi).

* * * * *

Paragraph 19(b)(2)(xii).

* * * * *

5. In Supplement I to Part 226, under paragraph heading *Paragraph 19(b)(2)(viii)(A)*, all references in paragraphs 3 and 4 to ''§ 226.19(b)(2)(viii)'' are revised to read ''§ 226.19(b)(2)(viii)(A)''.

6. In Supplement I to Part 226, under paragraph heading *Paragraph 19(b)(2)(viii)(A)*, in paragraphs 6 and 7 the words ''comment 19(b)(2)(x)'' are revised to read ''comment 19(b)(2)(viii)(B)'' each place they appear.

7. In Supplement I to Part 226, under paragraph heading *Paragraph 19(b)(2)(viii)(B)*, in paragraphs 2, 3, and 4 the words ''comment 19(b)(2)(viii)'' are revised to read ''comment 19(b)(2)(viii)(A)'' each place they appear.

8. In Supplement I to Part 226, Appendix H—Closed-End Model Forms and Clauses, Paragraphs 6 and 18, are revised to read as follows:

* * * * *

Appendix H—Closed-End Model Forms and Clauses

* * * * *

6. *Model H–4(C).* This model clause illustrates the early disclosures required generally under § 226.19(b). It includes information on how the consumer's interest rate is determined and how it can change over the term of the loan, and explains changes that may occur in the borrower's monthly payment. It contains an example of how to disclose historical changes in the index or formula values used to compute interest rates for the preceding 15 years. The model clause also illustrates the disclosure of the initial and maximum interest rates and payments based on an initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure and illustrates how to provide consumers with a method for calculating the monthly payment for the loan amount to be borrowed.

* * * * *

18. *Sample H–14.* This sample disclosure form illustrates the disclosures under § 226.19(b) for a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year. The sample form shows a creditor how to adapt the model clauses in Appendix H–4(C) to the creditor's own particular variable-rate program. The sample disclosure form describes the features of a specific variable-rate mortgage program and alerts the consumer to the fact that information on the creditor's other closed-end variable-rate programs is available upon request. It includes information on how the interest rate is determined and how it can change over time. Section 226.19(b)(2)(viii) permits creditors the option to provide either a historical example or an initial and maximum interest rates and payments disclosure; both are illustrated in the sample disclosure. The historical example explains how the monthly payment can change based on a $10,000 loan amount, payable in 360 monthly installments, based on historical changes in the values for the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. Index values are measured for 15 years, as of the first week ending in July. This reflects the requirement that the index history be based on values for the same date or period each year in the example. The sample disclosure also illustrates the alternative disclosure under § 226.19(b)(2)(viii)(B) that the initial and the maximum interest rates and payments be shown for a $10,000 loan originated at an initial interest rate of 12.41 percent (which was in effect July 1996) and to have 2 percentage point annual (and 5 percentage point overall) interest rate limitations or caps. Thus, the maximum amount that the interest rate could rise under this program is 5 percentage points higher than the 12.41 percent initial rate to 17.41 percent, and the monthly payment could rise from $106.03 to a maximum of $145.34. The loan would not reach the maximum interest rate until its fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed reflects the amortization of the loan during that period. The sample form also illustrates how to provide consumers with a method for calculating their actual monthly payment for a loan amount other than $10,000.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 21, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–31087 Filed 11–28–97; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29063; Amdt. No. 1835]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a

National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 14, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

2. Part 97 is amended to read as follows:

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

** * * Effective December 4, 1997*

Miami, FL, Miami Intl, ILS RWY 27R, Amdt 13
Grand Rapids, MI, Kent County Intl, ILS RWY 35, Orig
St Louis, MO, Lambert-St Louis Intl, LOC BC RWY 6, Amdt 2B, CANCELLED
Billings, MT, Billings Logan Intl, ILS RWY 28R, Orig
Savannah, TN, Savannah-Hardin County, SDF RWY 19, Amdt 4
Savannah, TN, Savannah-Hardin County, NDB RWY 19, Orig
Burlington, VT, Burlington, Intl, ILS/DME RWY 33, Orig
Winchester, VA, Winchester Regional, LOC RWY 32, Amdt 4, CANCELLED
Winchester, VA, Winchester Regional, ILS RWY 32, Orig

** * * Effective January 1, 1998*

Chandler, AZ, Chandler, Muni, VOR RWY 4L, Amdt 6
Chandler, AZ, Chandler, Muni, GPS RWY 4L, Orig
Half Moon Bay, CA, Half Moon Bay, GPS RWY 12, Orig
San Carlos, CA, San Carlos, GPS RWY 30, Orig
Steamboat Springs, CO, Steamboat Springs/Bob Adams Field, GPS–E, Orig
Bartow, FL, Bartow Muni, GPS RWY 9L, Amdt 1
Bartow, FL, Bartow Muni, GPS RWY 27R, Orig
Winter Haven, FL, Winter Haven's Gilbert, GPS RWY 4, Orig
Audubon, IA, Audubon County, NDB RWY 32, Amdt 5
Audubon, IA, Audubon County, GPS RWY 32, Orig
Marshalltown, IA, Marshalltown Muni, VOR RWY 12, Amdt 7A, CANCELLED
Marshalltown, IA, Marshalltown Muni, VOR GPS RWY 30, Amdt 7A, CANCELLED
Pella, IA, Pella Muni, NDB OR GPS RWY 34, Amdt 7
Pella, IA, Pella Muni, GPS RWY 16, Orig
Detroit, MI, Detroit Metropolitan Wayne County, ILS RWY 27L, Amdt 1
Eveleth, MN, Eveleth-Virginia Muni, VOR/DME RNAV RWY 27, Amdt 3
Manchester, NH, Manchester, ILS RWY 35, Amdt 18
New York, NY, La Guardia, VOR/DME or GPS–H Amdt 1
Syracuse, NY Syracuse Hancock Intl, VOR OR TACAN RWY 32, Orig
Syracuse, NY Syracuse Hancock Intl, VOR/DME OR TCAN RWY 32, Amdt 1 CANCELLED
Syracuse, NY Syracuse Hancock Intl, NDB RWY 28, Amdt 28
Syracuse, NY Syracuse Hancock Intl, ILS RWY 10, Amdt 9
Syracuse, NY Syracuse Hancock Intl, ILS RWY 28, Amdt 32
Socorro, NM, Socorro Muni, NDB–A, Orig
Socorro, NM, Socorro Muni, NDB OR GPS RWY 15, Orig, CANCELLED
Currituck, NC, Currituck County, VOR/DME–A, Orig
Currituck, NC, Currituck County, GPS RWY 4, Orig
East Liverpool, OH, Columbiana County, VOR RWY 25, Amdt 4
East Liverpool, OH, Columbiana County, GPS RWY 25, Orig
Philadelphia, PA, Philadelphia International, RNAV OR GPS RWY 35, Amdt 3A, CANCELLED
Philadelphia, PA, Philadelphia International, GPS RWY 27L, Orig
Philadelphia, PA, Philadelphia International, GPS RWY 35, Orig
York, PA, York, NDB RWY 17, Amdt 5
York, PA, York, GPS RWY 17, Orig
York, PA, York, GPS RWY 35, Amdt 1
Zelienople, PA, Zelienople Muni, GPS RWY 17, Orig
Zelienople, PA, Zelienople Muni, GPS RWY 35, Orig
Galax/Hillsville, VA, Twin County, VOR/DME OR GPS RWY 18, Amdt 4, CANCELLED
Hot Springs, VA, Ingall Field, ILS RWY 24, Amdt 2
Charleston, WV, Yeager, ISL RWY 23, Amdt 28
Point Pleasant, WV, Mason County, VOR/DME OR GPS–A, Amdt 4, CANCELLED
Point Pleasant, WV, Mason County, GPS RWY 25, Orig

Note: The FAA published the following procedure in Docket No. 29035, Amdt No. 1826 to Part 97 of the Federal Aviation Regulations (VOL 62, FR No. 200, Page 53745, dated Thursday, October 16, 1997) under Section 97.33 effective January 1, 1998, which should read as follows:

London, OH, Madison County, GPS RWY 8, Orig

[FR Doc. 97–31358 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29064; Amdt. No. 1836]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on November 14, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach

Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

. . . EFFECTIVE UPON PUBLICATION

FDC Date	State	City	Airport	FDC Number	SIAP
10/28/97	CO	Steamboat Springs	Bob Adams Field	FDC 7/6975	VOR/DME–C, Amdt 1
10/28/97	FL	Melbourne	Melbourne Intl	FDC 7/6995	GPS RWY 9L, Orig
10/28/97	PA	Clarion	Clarion Co	FDC 7/6976	VOR OR GPS–A Amdt 1
10/28/97	PA	Clarion	Clarion Co	FDC 7/6977	VOR/DME RNAV Rwy 6 Orig
10/28/97	PA	Connellsville	Connelsville	FDC 7/6978	LOC Rwy 5 Amdt 2
10/29/97	PA	Kutztown	Kutztown	FDC 7/6983	VOR–A Orig
10/29/97	PA	Erie	Erie Intl	FDC 7/7003	RADAR–1 Amdt 7
10/30/97	CO	Montrose	Montrose Regional	FDC 7/7056	VOR/DME Rwy 13, Amdt 8A
10/30/97	CO	Montrose	Montrose Regional	FDC 7/7057	VOR Rwy 13, Amdt 7A
10/30/97	CO	Montrose	Montrose Regional	FDC 7/7058	GPS Rwy 13, Orig
10/30/97	GA	Winder	Winder-Barrow	FDC 7/7044	VOR/DME RNAV OR GPS Rwy 23, Orig-A
10/30/97	VA	Quinton	Kent County	FDC 7/7048	VOR–A Orig
11/03/97	GA	Lawrenceville	Gwinnett County-Briscoe Field	FDC 7/7145	NDB or GPS Rwy 25 Orig-A
11/03/97	LA	Alexandria	Alexandria Intl	FDC 7/7082	ILS/DME Rwy 14, Amdt 1
11/03/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7071	NDB OR GPS Rwy 18, Amdt 1
11/03/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7074	RNAV RWY 18, Amdt 6
11/03/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7076	RNAV OR GPS Rwy 36, Amdt 3
11/05/97	AK	Anchorage	Anchorage Intl	FDC 7/7208	ILS Rwy 6R, Amdt 11
11/05/97	GA	Hampton	Clayton County-Tara Field	FDC 7/7193	VOR/DME–A Orig
11/05/97	GA	Lawrenceville	Gwinnett County-Brisco Field	FDC 7/7148	ILS RWY 25, Amdt 1
11/05/97	IA	Ankeny	Ankeny Regional	FDC 7/7212	NDB–A, Orig
11/06/97	CA	Merced	Merced Muni-Macready Field	FDC 7/7271	LOC BC Rwy 12 Amdt 9
11/06/97	CA	Merced	Merced Muni-Macready Field	FDC 7/7273	ILS Rwy 30 Amdt 13
11/06/97	CA	Merced	Merced Muni-Macready Field	FDC 7/7275	VOR or GPS Rwy 30 Amdt 17
11/06/97	IL	Belleville	MidAmerica Airport	FDC 7/7234	ILS Rwy 14R, Orig-A
11/06/97	MI	Grand Rapids	Kent County Intl	FDC 7/7243	VOR Rwy 17, Orig
11/06/97	MS	Clarksdale	Clarksdale/Fletcher Field	FDC 7/7231	PS Rwy 18, Orig
11/06/97	ND	Devils Lake	Devils Lake Muni	FDC 7/7233	ILS Rwy 31, Orig
11/06/97	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 7/7253	Converging ILS Rwy 36L, Amdt 3
11/06/97	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	FDC 7/7254	ILS Rwy 36L, Amdt 5
11/06/97	TX	Dallas Fort-Worth	Dallas-Fort Worth Intl	FDC 7/7255	ILS Rwy 36R, Amdt 2
11/06/97	TX	Dallas Fort-Worth	Dallas-Fort Worth Intl	FDC 7/7256	Converging ILS Rwy 36R, Amdt 1
11/06/97	WA	Spokane	Felts Field	FDC 7/7262	ILS/DME Rwy 21R, Orig
11/07/97	AL	Tuscaloosa	Tuscaloosa Muni	FDC 7/7297	NDB or GPS Rwy 4 Amdt 10
11/07/97	AL	Tuscaloosa	Tuscaloosa Muni	FDC 7/7298	VOR or TACAN Rwy 4 Amdt 11
11/07/97	AL	Tuscaloosa	Tuscaloosa Muni	FDC 7/7299	ILS Rwy 4 Amdt 14
11/07/97	AL	Tuscaloosa	Tuscaloosa Muni	FDC 7/7300	VOR or TACAN or GPS Rwy 22 Amdt 13
11/07/97	IN	Angola	Tri-State Steuben	FDC 7/7292	NDB Rwy 5, Amdt 6
11/07/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7313	ILS Rwy 18 Amdt 5
11/07/97	MS	Greenwood	Greenwood-Leflore	FDC 7/7314	VOR or GPS Rwy 5 Amdt 10

[FR Doc. 97–31359 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29065; Amdt. No. 1837]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP's mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

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

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

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on November 14, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend §§ 97.23, 97.27, 97.33, and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

. . . *Effective Jan. 1, 1998*

Ozark, AL, Blackwell Field, VOR or GPS RWY 30, Amdt 6A CANCELLED
Ozark, AL, Blackwell Field, VOR RWY 30, Amdt 6A
Crookston, MN, Crookston Muni-Kirkwood Field, VOR or GPS RWY 31, Amdt 4A CANCELLED
Crookston, MN, Crookston Muni-Kirkwood Field, VOR RWY 31, Amdt 4A
Coshocton, OH, Richard Downing, VOR/DME RNAV or GPS RWY 22, Amdt 4 CANCELLED
Coshocton, OH, Richard Downing, VOR/DME RNAV RWY 22, Amdt 4
Marshall, TX, Harrison County, VOR/DME RNAV or GPS RWY 33, Amdt 1B CANCELLED
Marsahall, TX, Harrison County, VOR/DME RNAV RWY 33, Amdt 1B

[FR Doc. 97–31360 Filed 11–28–97; 8:45 am]
BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

Miscellaneous Revisions to the NASA Grant and Cooperative Agreement Handbook, Section A

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The NASA Grant and Cooperative Agreement Handbook regulation is published in the Code of Federal Regulations. This is a final rule to amend the Handbook to: Redefine certain grant terms to eliminate ambiguities; clarify definitions and proposal and certification requirements relative to action type; raise the subcontract consent level from $25,000 to $100,000; clarify when it is necessary to obtain a revised budget proposal for competitively selected research grants; reduce the level of detail required for proposed travel costs; waive the requirement for Grant Officer approval of competitively selected research grants where 50 percent or more of the proposed funding is for equipment or travel; and clarify the requirements for proposal and approval procedures to permit the direct charge of general purpose equipment.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Donna Fortunat, NASA, Office of Procurement, Contract Analysis Division (Code HC), (202) 358–0426.

SUPPLEMENTARY INFORMATION:

Background

The NASA Grant and Cooperative Agreement Handbook is the NASA regulation for awarding and administering grants and cooperative agreements (14 CFR part 1260). Subpart A provides the text of provisions and special conditions and addresses NASA's authority, definitions, applicability, amendments, publications, deviations, pre-award requirements and post-award requirements.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paper Reduction Act.

List of Subjects in 14 CFR Part 1260

Grant programs—science and technology, Reporting and recordkeeping requirements, Research.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR Part 1260 is amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

1. The authority citation for 14 CFR Part 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. 2.97–258, 96 Stat. 1003 (31 U.S.C. 6301 et seq.), and OMB Circular A–110.

2. In section 1260.2, the definitions ''Extension'' and ''Supplement'' are removed, and the following definition ''Amendment'' is added in alphabetical order to read as follows:

§ 1260.2 Definitions.

* * * * *

Amendement. Any document used to effect modifications to grants and cooperative agreements. Amendments may be issued unilaterally at the discretion of the Grant Officer.

* * * * *

3. In section 1260.11, paragraphs (d) and (e)(1) are revised and paragraph (e)(3) is added to read as follows:

§ 1260.11 Evaluation and selection.

* * * * *

(d) *Equipment justification on travel justification.* Unless the proposal is selected using a competitive process, for example, a NASA Research Announcement or a Cooperative Agreement Notice, these documents will be submitted by the technical office for grant officer approval when more than half of the proposed budget is for equipment or travel and associated indirect cost. The justification shall describe the extent to which the equipment or travel is necessary.

(e) *Proposal budget evaluation.* (1) The technical officer will review the recipients' estimated cost for conformance to program requirements and funds availability. The results of this review shall be recorded in Column B of the proposed Budget Summary Form (Exhibit C). New budgets are not required when the program office recommended funding is within 20 percent of the proposed amount, provided specific proposed objectives have not been added or deleted. However, when equipment and/or subcontracts are involved, the cognizant program office is required to identify the cost element(s) affected by the change in funding level.

* * * * *

(3) The grant officer will address requests for direct charge of general purchase equipment in a negotiation summary and indicate whether the proposed purchase is approved as a direct cost.

* * * * *

4. Section 1260.13 is revised to read as follows:

§ 1260.13 Award procedures.

(a) *Award instruments*—(1) *Annual grant.* Grant may be awarded for a short term (e.g., on an annual basis).

(2) *Multiple year grant.* NASA policy is to make maximum use of multiple year grants to support research projects that may span several years. A multiple year grant is generally selected for a period of three years in keeping with NASA's policy calling for research to be peer reviewed at least every three years.

(i) If the decision to provide multiple year funding to a research proposal is made, the special condition in § 1260.52, ''Multiple Year Grants'', will be included in the award.

(ii) Periods approved under the Multiple Year Grants special condition in § 1260.52, and funded at the levels specified in the special condition, are not considered to be new awards. Therefore, new proposals, new proposal-related certifications (such as Drug Free Workplace and Debarment and Suspension) and new technical evaluations are not required.

(iii) If NASA program constraints or developments within the research project dictate a reduction in the funding level specified under a multiple year grant period, research may continue at the reduced level under the terms of the special condition; however, the recipient may rebudget under the grant provisions to keep the project within the funding actually provided.

(3) *Supplements.* A supplement to a grant may be issued at any time when work is introduced which is outside the scope of the approved proposal; or when there is a need for substantial unanticipated funding. Supplements require the submission of revised budget proposals and technical evaluations. Since Supplements will be performed within the existing period of performance, certifications will not normally be required.

(4) *Extensions.* Grant may be extended beyond the expiration date in accordance with § 1260.22, ''Extensions'', if additional time beyond the established period of performance is required to assure adequate completion of the original scope of work within the available funding.

(5) *Renewals.* Grant renewals provide for continuation of research beyond the original scope, period of performance and funding levels; therefore, new proposals, certifications and technical evaluations are required prior to the execution of a grant renewal. Continued performance within a period specified under the Multiple Year Grants special condition does not constitute a renewal. Peer review of the continuing research should be accomplished prior to selecting a research grant for renewal. The Multiple Year Grant special condition may be incorporated into renewals.

(b) *Funding arrangements.* While NASA normally provides full funding support for research grants, alternate methods of grant funding are as follows:

(1) *Cost sharing.* Since NASA grant recipients usually gain no measurable benefit from grants other than conducting research, cost sharing for research grants is not generally required. NASA may, however, accept cost sharing when voluntarily offered. Additionally, in instances when the Grant Officer determines that the recipient will benefit from research results through sales to non-Federal entities, cost sharing based upon this mutuality of interest will apply (see § 1260.123). When cost sharing is used, the Grant Officer shall insert a special condition substantially as shown in § 1260.54, ''Cost Sharing.''

(2) *Partial support.* NASA may provide partial support for a research project or conference where additional funding is being provided by other Federal agencies. If the grant also involves cost sharing by the recipient, the Grant Officer will ensure that the recipient's share does not include any Federal funds.

5. In § 1260.32 the clause heading and paragraphs (a) and (c) are revised and a bracket line is added at the end of the section to read as follows:

§ 1260.32 Subcontracts.

Subcontracts (November 1997)

(a) For all subcontracts over $100,000, the recipient shall provide the following to the NASA grant officer for approval:

(1) A copy of the proposed subcontract.

(2) The basis for subcontractor selection.

(3) Justification for lack of competition when competitive bids or offers are not obtained.

(4) The subcontract budget and basis for subcontract cost or price.

* * * * *

(c) All contracts awarded by a recipient, including small purchases, shall contain the provisions in appendix A of subpart B of this part.

[End of provision]

[FR Doc. 97–30972 Filed 11–28–97; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[A.G. Order No. 2130–97]

Organization; Approval of Charges Under the Economic Espionage Act of 1996

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends Part 0 of Title 28, Code of Federal Regulations, to require that the United States may not file charges under the Economic Espionage Act of 1996 (EEA), or use a violation of the EEA as a predicate offense under any other law, without the personal approval of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General in charge of the Criminal Division (or the Acting Official in each of these positions if a position is filled by an Acting official).

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Bert Brandenberg, Director, Office of Public Affairs, U.S. Department of Justice, Washington, DC 20530, (202) 616–2777.

SUPPLEMENTARY INFORMATION: This order pertains to a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). This rule is not a ''significant regulatory action'' under Executive Order 12866; accordingly, it has not been reviewed by the Office of Management and Budget. It is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Act of 1996. Finally, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

List of Subjects in 28 CFR Part 0

Authority delegations (government agencies), Government employees, Organizations and functions (government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, Part 0 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.64–5 is added to read as follows:

§ 0.64–5 Policy with regard to bringing charges under the Economic Espionage Act of 1996, Pub. L. 104–294, effective October 11, 1996.

The United States may not file a charge under the Economic Espionage Act of 1996 (EEA), Pub. L. 104–294, 110 Stat. 3488, 18 U.S.C. 1831 *et seq.*, effective October 11, 1996, or use a violation of the EEA as a predicate offense under any other law, without the personal approval of the Attorney General, the Deputy Attorney General, or the Assistant Attorney General of the Criminal Division (or the Acting official in each of these positions if a position is filled by an Acting Official). Violations of this regulation are appropriately sanctionable and will be reported by the Attorney General to the Senate and House Judiciary Committees. Responsibility for reviewing proposed charges under the EEA rests with the Computer Crime and Intellectual Property Section, Criminal Division, which will consult with the Internal Security Section, Criminal Division, in cases involving charges under 18 U.S.C.

1831. This regulation shall remain in effect until October 11, 2001.

Dated: November 20, 1997.

Janet Reno,

Attorney General.

[FR Doc. 97–31192 Filed 11–28–97; 8:45 am]

BILLING CODE 4410–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AI92

Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) loan guaranty regulations concerning the requirements for Interest Rate Reduction Refinancing Loans (IRRRLs). In a document published in the **Federal Register** on October 8, 1997 (62 FR 52503), VA issued an interim final rule which generally limited these loans to instances where the veteran's monthly mortgage payment will decrease, and generally required that the loans being refinanced be current in their payments. The interim final rule stated that it was effective on the date of publication. A subsequent administrative issuance delayed the effective date of the changes made by the interim final rule until December 1, 1997. This administrative issuance has caused uncertainty concerning the implementation of the interim final rule. Under these circumstances, this document rescinds the interim final rule and VA is rescinding the administrative issuance. We intend in the near future to publish a proposed rule to address the same issues that were addressed in the interim final rule. Further, the comments received in response to the interim final rule will be considered in the new rulemaking proceeding.

DATES: *Effective Date:* December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found good cause to dispense with notice and comment on this final rule and to dispense with a 30-day delay of its effective date. Such actions are impracticable, unnecessary, and contrary to the public interest. The issues raised by the interim final rule will be subjected to notice and comment in a future rulemaking proceeding. Further, the final rule is necessary to avoid uncertainty regarding the implementation of the interim final rule.

Regulatory Flexibility Act

Because no notice of proposed rule making was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Catalog of Federal Domestic Assistance Program number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: November 25, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4306a, paragraphs (a)(6) and (a)(7) are removed and paragraphs (a)(3) through (a)(5) are revised, to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) * * *

(3) The amount of the refinancing loan may not exceed:

(i) An amount equal to the balance of the loan being refinanced and such closing costs as authorized by § 36.4312(d) and a discount not to exceed 2 percent of the loan amount; or

(ii) In the case of a loan to refinance an existing VA guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, an amount equal to the sum of the amount referred to with respect to the loan under paragraph (a)(3)(i) of this section and the amount authorized by § 36.4336(a)(4);

(Authority: 38 U.S.C. 3710(a))

(4) The dollar amount of the guaranty of the 38 U.S.C. 3710(a)(8) or (9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(5) The term of the refinancing loan (38 U.S.C. 3710(a)(8)) may not exceed the original term of the loan being financed plus ten years or the maximum loan term allowed under 38 U.S.C. 3703(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 3712 the loan term, if being refinanced under 38 U.S.C. 3710(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 3703(d)(1).

(Authority: 38 U.S.C. 3710(e)(1))

3. In § 36.4337, paragraph (a) is revised, to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility, and lender certification.

(a) *Use of standards.* Except for refinancing loans guaranteed pursuant to 38 U.S.C. 3710(a)(8), the standards contained in paragraphs (c) through (j) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory.

* * * * *

[FR Doc. 97–31369 Filed 11–28–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 036–1036; FRL–5929–3]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve an Iowa State Implementation Plan (SIP) revision pertaining to the Muscatine, Iowa, sulfur dioxide (SO_2) nonattainment area. This action will make federally enforceable state permits and related source specific emission limits and other conditions which will ensure attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on December 31, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

I. Background

In the August 15, 1997 **Federal Register** (62 FR 43681), the EPA proposed to approve an Iowa SIP revision which pertained to the Muscatine, Iowa, SO_2 nonattainment area. The SIP was submitted to satisfy the requirements of section 110 and part D of title I of the Clean Air Act (Act).

No comments were received during the public comment period. Thus, the EPA is taking final action to approve the state's SIP revision.

The proposed approval discussed the state's submittal in detail. The SIP includes revised permits for three affected SO_2 sources in the Muscatine nonattainment area. These permits contain enforceable emission limits and conditions with compliance dates of March 15, 1996, for two of the sources and July 18, 1996, for the third. The permits result in actual and potential emission reductions intended to prevent any exceedances or violations of the SO_2 NAAQS.

The SIP also demonstrated the state's conformance with the nonattainment plan provisions of part D, section 172(c) of the Act and section 110.

There have been no exceedances or violations of the NAAQS at the Muscatine monitors since September 1995. The state has committed to continue operation of the three monitors in the Muscatine area, and will implement provisions of its contingency plan in the event of a NAAQS exceedance.

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

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 5, 1997.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(65) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(65) On June 13, 1996, and April 25, 1997, the Director of the Iowa Department of Natural Resources (IDNR) submitted a revision to the State Implementation Plan (SIP) which included permits containing source specific emission limits and conditions for three sources in Muscatine, Iowa.

(i) Incorporation by reference.

(A) Grain Processing Corporation permits #95-A–374, #74-A–015-S, #79-A–194-S, #79-A–195-S, signed September 18, 1995.

(B) Muscatine Power and Water permits #74-A–175-S, #95-A–373 signed September 14, 1995.

(C) Monsanto Corporation permits #76-A–265S3, #76-A–161S3, signed July 18, 1996.

(ii) Additional material.

(A) Letters from Allan E. Stokes, IDNR, to Dennis Grams, Environmental Protection Agency, dated June 13, 1996,

and April 21, 1997, containing supporting SIP information.

[FR Doc. 97–31410 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ033–0007; FRL–5928–3]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County CO Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action constitutes EPA's response to the Ninth Circuit Court of Appeals' July 31, 1997 opinion in *DiSimone* versus *Browner*, No. 96–70974 (9th Cir. July 31, 1997). As a result of the opinion, EPA is restoring the contingency procedures in the carbon monoxide (CO) federal implementation plan (FIP) for the Maricopa County, Arizona nonattainment area (Phoenix) that it promulgated in accordance with Agency guidance issued prior to the 1990 Clean Air Act Amendments (CAAA). EPA is also withdrawing its approval of two contingency measures submitted by the State as revisions, pursuant to the 1990 CAAA, to the CO state implementation plan (SIP) for Phoenix.

EFFECTIVE DATE: This action is effective as of December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jan Taradash, Office of Regional Counsel (ORC–2), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California, 94105–3901, (415) 744–1335 or Sara Schneeberg, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–5145.

SUPPLEMENTARY INFORMATION:

I. Background

In March 1990, the United States Court of Appeals for the Ninth Circuit vacated EPA's 1988 approval of the State of Arizona's SIP for the Phoenix CO nonattainment area and directed the Agency to promulgate a Federal implementation plan (FIP) under section 110(c) of the Clean Air Act (CAA) that included contingency procedures in accordance with its then existing guidance.[1] *Delaney* versus *EPA*, 898 F.2d 687 (9th Cir. 1990). In November 1990, the 1990 Amendments to the Clean Air Act (CAAA) were enacted which comprehensively revised the statute, including the provisions dealing with nonattainment areas and the deadlines and requirements for achieving attainment. EPA then filed in the Ninth Circuit a motion to recall the *Delaney* mandate, arguing, in part, that promulgation of the FIP under the pre-amended statute was inconsistent with both the structure and substantive provisions of the new law. EPA also argued that section 193, the general savings clause, of the 1990 Amendments did not preserve the Agency's pre-amendment FIP obligation.[2] The Ninth Circuit denied EPA's motion without opinion and EPA subsequently promulgated the FIP contingency procedures. 56 FR 5458 (Feb. 11, 1991).

In 1994 Arizona submitted to EPA contingency measures (an enhanced remote sensing program and a traffic diversion measure) adopted to satisfy the requirements of section 172(c)(9), a new provision added to the CAA by the 1990 Amendments.[3] In 1996, EPA approved these State measures as meeting the requirements of sections 110(a) and 172(c)(9) of the CAA and withdrew the FIP contingency procedures. 61 FR 51599 (Oct. 3, 1996). The Arizona Center for Law in the Public Interest (ACLPI) subsequently filed a petition for review of this action in the Ninth Circuit and the Court issued its opinion on July 31, 1997. *DiSimone* versus *Browner*, No. 96–70974 (9th Cir. July 31, 1997).

In its petition, ACLPI challenged EPA's action on several grounds, including that: (1) EPA violated section 193 by approving measures that did not insure equivalent or greater emission reductions than the FIP, and (2) the contingency measures approved by EPA did not comply with the requirements of section 172(c)(9). On these grounds, petitioners' requested that the court vacate EPA's approval of the state's contingency measures and withdrawal of the FIP contingency procedures, and direct EPA to restore the FIP contingency procedures.

In its opinion, the Court found that EPA's replacement of the court-ordered federal contingency provisions with state provisions under the new statutory scheme violated the *Delaney* mandate. Slip op. at 9023. The Court further found that EPA was precluded from litigating in *DiSimone* the issue of whether the amended Act authorized EPA's withdrawal of the FIP contingency procedures and approval of the State's contingency measures in their place. Slip op. at 9025. To support that conclusion, the Court reasoned that:

> [T]he issue presented in EPA's motion to recall the mandate [in *Delaney*] and the issue presented in this case [*DiSimone*] are indeed identical. The arguments advanced by EPA in both cases were that requiring the continued adherence to pre-Amendment guidelines would thwart Congressional intent and be inconsistent with the reclassification scheme introduced by the 1990 amendments. In addition, both the motion to recall the mandate and EPA's brief in this case addressed the General Savings Clause * * * as not applicable to the court's order in *Delaney*. Slip op. at 9026.

The Court also stated that the 9th Circuit panel denying EPA's motion to recall the mandate ''decided against all of the arguments presented in EPA's motion because such a determination was necessary to deny the motion.'' Slip op. at 9027. The Court did not, however, indicate what specific relief sought by ACLPI it was granting. Instead, it merely granted the petition *''for the foregoing reasons.''* (Emphasis added). Slip op. at 9028.

Because of the Court's exclusive reliance on *Delaney*, the restoration of the FIP contingency procedures is clearly compelled by its granting of ACLPI's petition. As to the State's contingency measures, nowhere in the opinion does the Court address the issue of whether the State's measures meet the requirements of sections 110(a) and 172(c)(9) of the CAA.[4] Thus there is no indication as to whether EPA's approval of these measures could remain in place in light of the restoration of the FIP.

However, throughout the opinion there is evidence that the gravamen of the Court's objection to EPA's action was the substitution of the State's contingency measures for the FIP

[1] The CAA prior to the 1990 Amendments contained no statutory provision for contingency procedures or measures. As a result of this absence, EPA developed the guidance pursuant to which the FIP was promulgated. 46 FR 7187 (January 22, 1981).

[2] Section 193 provides, in pertinent part:

> No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

EPA did not advance in its motion an argument concerning the effect of section 193 on any subsequent replacement of the FIP contingency procedures with approved state measures.

[3] Section 172(c)(9) requires SIPs to provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress (RFP) or attain the national ambient air quality standard (NAAQS) by the applicable attainment date.

[4] In fact, ACLPI did not raise in its petition for review any issues relating to EPA's approval of the contingency measures under section 110(a).

contingency procedures.[5] Consequently EPA has concluded that the Court viewed the Agency's withdrawal of the FIP contingency procedures and approval of the State's contingency measures as interdependent. Because EPA does not intend to seek a rehearing from the Ninth Circuit, the Agency believes that, for the purpose of this action, it has no choice but to withdraw its approval of the State's measures in addition to restoring the FIP contingency procedures.[6]

II. Final Actions

A. Rule

For the foregoing reasons, EPA is taking final action to restore the federal contingency procedures for the Phoenix CO nonattainment area. Specifically, the Agency is restoring the phrase ''After December 31, 1991 for the Maricopa CO nonattainment area or'' to the contingency provisions at 56 FR 5471, col. 2 (Feb. 11, 1990). EPA is also, for the reasons discussed above, withdrawing its approval of the State's contingency measures as meeting the requirements of sections 110(a) and 172(c)(9) of the CAA.

At the time EPA approved the State's contingency measures and withdrew the FIP contingency procedures, the Agency also withdrew the list of highway projects potentially subject to delay that the Agency proposed on June 28, 1993 during the partial implementation of the FIP at that time. 58 FR 34547.[7] EPA is today reaffirming the withdrawal of that list because it is no longer current. During any future implementation of the FIP contingency procedures, EPA will propose an updated list of projects potentially subject to delay.

B. Effective Date and Notice and Comment Under the Administrative Procedures Act

Today's action will be effective on December 1, 1997. Under the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. In today's action, EPA is simply implementing administratively a result that the Ninth Circuit Court of Appeals effectuated in its July 31, 1997 opinion in *DiSimone* v. *Browner.* Therefore an effective date prior to 30 days after the date of publication is warranted.

Similarly, while this document constitutes final agency action, EPA finds good cause to forego prior notice and comment under the APA, 5 U.S.C. 553(b). Notice and comment are unnecessary because no EPA judgment is involved in restoring the FIP contingency procedures and withdrawing the Agency's approval of the State's contingency measures pursuant to the Ninth Circuit's opinion in *DiSimone.*

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice and comment rulemaking requirements under the good cause exception. Because this action is exempt from such requirements, as described above, it is not subject to the RFA.

C. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 2 U.S.C. 1501–1571, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by this rule.

EPA's withdrawal of its approval of the State's contingency measures does not include a federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action simply makes requirements that the State is already imposing no longer subject to federal enforcement. Restoration of the FIP contingency procedures puts back in place federal requirements that existed prior to their withdrawal by the Agency in 1996. To the extent that this action imposes any mandate on State, local, tribal governments or the private sector, EPA concludes that it would not result in estimated costs of $100 million or more. With regard to both actions, EPA is simply implementing administratively what the Ninth Circuit effectuated in its July 31, 1997 opinion in *DiSimone* v. *Browner.* Therefore EPA has not prepared a budgetary impact statement for this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 30, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

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[5] For example: ''We hold that EPA acted in disobedience of an order of this court in withdrawing the federal plan and approving a state plan in its place.* * *'' Slip op. at 9019; ''Here, the issue to be foreclosed is whether, in light of the 1990 amendments to the Clean Air Act, EPA was permitted to approve a state implementation plan in place of the federal plan ordered by the *Delaney* panel.'' Slip op. at 9025.

[6] It should be noted that those measures no longer serve a contingency function because they were implemented when the Phoenix area was automatically reclassified from a ''moderate'' to a ''serious'' CO nonattainment area upon EPA's finding that the area had failed to meet the statutory attainment deadline of December 31, 1995. See 61 FR 39343 (July 29, 1996) and footnote 3. As a result of the reclassification, the State is required to submit a serious area SIP revision for Phoenix by February 28, 1998 that includes new contingency measures pursuant to CAA section 172(c)(9).

[7] For the full text of the FIP contingency procedures, see 56 FR 5471–5472.

Dated: November 20, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52 —[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

§ 52.120 [Amended]

2. Section 52.120 is amended by removing and reserving paragraphs (c)(83) and (c)(85).

[FR Doc. 97–31278 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–5930–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Removal of Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is removing the final rule appearing at 56 **Federal Register** (FR) 67197 (December 30, 1991) insofar as it excluded hazardous waste treatment residue generated by Reynolds Metals Company (Reynolds), Gum Springs, Arkansas, from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 (hereinafter all sectional references are to 40 CFR unless otherwise indicated). This decision to repeal the exclusion is based on an evaluation of waste-specific information provided by Reynolds and obtained by EPA either independently or from the Arkansas Department of Pollution Control and Ecology (ADPC&E) subsequent to the promulgation of the exclusion. After the effective date of this rule, future spent potliner waste generated at Reynolds' Gum Springs, Arkansas, facility will no longer be excluded from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) and must be handled as hazardous waste in accordance with sections 260 through 266, 268 and 273 as well as any applicable permitting standards of section 270. This rule does not remove or affect EPA's reasoning or evaluation as it related to the modified EPA Composite Model for Landfills (EPACML).

EFFECTIVE DATE: December 1, 1997.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Review Room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6775 for appointments. The reference number for this docket is ''F–97–ARDEL–REYNOLDS.'' The docket may also be viewed at the Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION, CONTACT: For general and technical information concerning this notice, contact William Gallagher, Delisting Program (6PD–O), Region 6, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, (214) 665–6775.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority for ''Delisting''

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in sections 261.31 and 261.32. Specifically, section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations (CFR); and section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a ''generator-specific'' basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

Reynolds was granted a final exclusion for K088 waste treatment residues on December 30, 1991 (*see* 56 FR 67197). In that rule, EPA also addressed the modified EPACML. The EPA believes its statements contained in that rule related to the EPACML remain accurate. Today's action is not intended to repeal or otherwise affect EPA's adoption or use of that model.

After evaluation of new data, EPA proposed, on July 31, 1997, repeal of the final rule issued December 30, 1991 (*see* 62 FR 41005). This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to repeal the Reynolds exclusion.

C. Subsequent Events

Under the RCRA Land Disposal Restrictions (LDR) Program certain hazardous wastes cannot be land disposed until they satisfy treatment standards promulgated by EPA (RCRA sections 3004 (d)–(g)). On April 8, 1996, EPA prohibited land disposal, of and established treatment standards for, spent potliners from aluminum production (K088 hazardous wastes, 61 FR 15566, April 8, 1996). At that time (and still today), Reynolds has the only commercially available treatment facility that is capable of meeting those LDR treatment standards. However, as discussed below in section II., EPA had concerns about concentrations of certain hazardous constituents in the leachate from Reynolds treatment process residue, especially because such treatment residues had been delisted and were being disposed in units which were not subject to RCRA subtitle C standards [62 FR 1994–62 FR 1995 (January 14, 1997)]. The EPA initially extended the national capacity variance until July 8, 1997. At that time, after reexamination, the Agency found that Reynolds was providing treatment and disposal capacity which is protective of human health and the environment (RCRA section 3004(h)(2)), and accordingly found that there is adequate treatment capacity for K088 wastes. [62 FR 37694 (July 14, 1997)]. The national capacity variance was further extended three months to allow generators to make necessary logistic arrangements (Id. at 37694).

The Agencys decision rested upon two principal factors. Reynolds process destroys most of the most hazardous constituent in K088 wastes—cyanide—immobilizes most of the toxic metals, and destroys all polycyclic aromatic hydrocarbons (62 FR 37694, 62 FR 37696). In addition, Reynolds disposal

of treatment residue in units not subject to subtitle C regulation will end, and all future disposal must be in units which must comply with subtitle C standards (Id. at 37697). The immediate mechanism for addressing, the concerns about ''protective'' disposal capacity was the September 3, 1997, issuance of a unilateral administrative order under RCRA section 7003 (UAO), which required Reynolds to comply with RCRA Subtitle C management standards at its treatment facility in Gum Springs, and at its mining site located in Bauxite, Arkansas, where the treatment residue had been used as fill material in reclamation activities.[1] The company agreed to comply with the terms of the UAO in a letter to EPA dated September 5, 1997. At the Gum Springs facility, the UAO and amended UAO require Reynolds to: (1) Manage the kiln residue and the kiln residue leachate as a hazardous waste; (2) conduct 30-day compliance sampling of the kiln residue; (3) discontinue placement of the kiln residue into Cell #1 of the Reynolds on-site monofill, and initiate and complete construction of a clay cap on that cell that meets RCRA requirements; and (4) upgrade Cell #2 of the newly regulated monofill by, *inter alia*, installation of a double composite liner with leachate collection capabilities and to meet all RCRA subtitle C standards applicable to landfills. At the Hurricane Creek facility, the Order requires Reynolds to: (1) Control access to the E–40 mine pit; (2) conduct an environmental impact study; (3) submit a hydrogeological investigation plan; (4) submit a revised ground water monitoring plan; (5) complete one year of ground water monitoring, subject to continued monitoring; and (6) remove existing and discontinue construction of roadways which utilize kiln residue.

II. Repeal of Final Rule Granting Reynolds Delisting Petition

A. Highly Alkaline Nature of Reynolds Treatment Residue

As noted above, subsequent to issuing the final rule granting Reynolds delisting petition, EPA obtained additional information gathered after operations at the Gum Springs facility began. Specifically, EPA received and analyzed data regarding the actual leachate from cell #1 of the monofill at Gum Springs produced from residue generated by Reynolds K088 treatment process as well as data from Reynolds Hurricane Creek mining site. As explained in greater detail in the proposed rule, those data indicate that the monofill leachate contains levels of hazardous constituents significantly higher than the delisting levels [62 FR 41005, 62 FR 41007, (July 31, 1997)]. Those data also show that the leachate is corrosive with a pH in the range of 12.5–13.5 therefore making it a characteristically hazardous waste as defined by section 261.22. In light of those actual field data, EPA has concluded that the Agencys 1991 determination under section 260.22 that no other hazardous constituents or factors that could cause the K088 treatment residue resulting from Reynolds treatment process to be hazardous are present in the waste at levels of regulatory concern need to be revised.

Specifically, EPA now concludes that although significant treatment is occurring (see sections I.C. and II. B. 2.f.), the highly alkaline nature of the treatment residue is a factor which warrants retaining it as a hazardous waste. Mobility of arsenic and cyanide, remaining in the residue following treatment increases in a highly alkaline disposal environment such as that utilized by Reynolds. As a result, these compounds leach from the residue at hazardous levels. In addition, the leachate is a hazardous waste because it exhibits the hazardous waste characteristic of corrosivity. Therefore, based on this new data, the treatment residue should no longer be delisted.

B. Agency Response to Public Comments

General. The EPA received public comments from eight interested parties. The comments were received from two Arkansas private citizens, two Arkansas local government officials, one Arkansas environmental group, the Environmental Defense Fund, counsel from a consortium of aluminum producers in the northwest U.S., and Reynolds. No adverse comments were received regarding repeal of the delisting.

1. Issues Not Directly Related to the Proposed Repeal

Interested parties submitted comments related to the following areas which are not part of today's final action by EPA:

- Waste management and waste disposal issues;
- Permitting issues;
- Hazards to human health and the environment;
- Additional analyses/investigations;
- Land Disposal Restrictions/ effectiveness of Reynolds' treatment process;
- Toxicity Characteristic Leaching Procedure;
- Perceived delays in EPA's decision-making; and
- Enforcement issues/unlawful disposal/Arkansas Department of Pollution Control & Ecology Consent Administrative Order/draft EPA RCRA section 7003 order.

Because these comments address issues that did not directly bear upon the decision to repeal the delisting exclusion, EPA will not respond to them as part of this rulemaking. Any additional observations provided in this document respecting those issues are simply informational and do not form a basis for a final action by EPA. Importantly, no commenter felt that the delisting exclusion should be retained.

a. Waste Management and Waste Disposal Issues. Several comments related to whether Reynolds' management of the leachate and residue was responsible, in light of the nature of the waste, whether the waste should remain in place or be immediately removed from Cell #1 of the landfill at Gum Springs or from the mine pit and a research and development landfill at the Hurricane Creek facility, and what oversight authority EPA will exercise to ensure that the State of Arkansas inspects and oversees the Reynolds operation. These are enforcement and oversight issues and are separate and distinct from today's final rule which merely repeals a previous exclusion. Although comments of this nature did not bear on the substance of today's rulemaking, EPA notes that investigations are being conducted under the UAO which pertain to some of these issues, and it is premature to comment on any potential future enforcement response by the Agency. The State is authorized to administer the RCRA program, and EPA will conduct additional oversight activities as appropriate.

b. Permitting Issues. A second broad group of comments related generally to permitting issues such as ecological and human health assessments, ground water and surface water monitoring, a health and safety plan for Reynolds' operations, landfill operations, incompatibility of the landfill liner and leachate collection system, commingling of waste from Cells #1 and #2, public participation in permitting, and siting issues. Again, these issues are not relevant to the question decided by today's final action whether to repeal a previous exclusion. Indeed, these concerns support EPA's decision to

[1] The Unilateral Administrative Order issued September 3, 1997 was amended on October 31, 1997.

again impose regulatory controls on the spent potliner waste generated by Reynolds. The Agency believes that the permitting issues raised by the commenters are best addressed during the State's permitting process for the Reynolds Gum Springs facility.

c. Hazards to Human Health and Environment. Some commenters alleged that the Reynolds operation might be the cause of two eagle kills in the area and of adverse health effects being alleged by workers at the Hurricane Creek facility. Commenters were also concerned that the area's water supply be protected. The Agency believes that the imposition of hazardous waste management controls through the UAO and this repeal will help ensure that appropriate requirements apply to better protect human health and the environment. While no direct evidence linking the eagle kills to Reynolds' waste was provided by the commenter, the appropriate State and Federal agencies are investigating that concern as well as complaints of the workers.

d. Additional Analysis/Investigations. Other comments related generally to the need for additional analysis or investigation. Commenters requested information on the performance of toxicological assays and investigations of past and present threats to human health and the environment. The evaluation of the threats to human health and the environment and toxicological assays relate to the permitting and enforcement processes and should be raised as part of those processes. Again, the concerns only tend to support todays action: bringing the wastes back into the RCRA regulatory system for hazardous waste management.

e. Toxicity Characteristic Leaching Procedure (TCLP). Several comments generally addressed use of the TCLP to evaluate the residue. Commenters claimed that there was a failure of the testing system and analytical methods used to identify the potential problems with the residue. They also indicated that information regarding the potential failure of the testing program was in the Agencys possession since January 1992, and additionally addressed Reynolds development of replacement tests for the TCLP. Whether the TCLP correctly predicts behavior of the waste in a landfill is not the focus of EPAs decision today to repeal Reynolds delisting. As explained in the proposal, the Agencys decision to repeal is based, in part, on sampling results from actual landfill leachate, not on the results of a TCLP analysis of the residue itself. To the extent comments addressed the validity of the TCLP test method itself, revision or modification of the TCLP is beyond the scope of todays action.

f. Perceived Delays in EPAs Decision-Making. Commenters complained that the Agency did not respond timely in repealing the delisting and questioned why it took the Agency more than fourteen months to propose repeal of the delisting. They also comment that the Agency never sought copies of all the data in Reynolds possession concerning the performance of the treatment technology and generation of hazardous constituents in treated materials disposed at various locations. The Agency believed it appropriate to base its decision upon a reasoned evaluation of all available facts. It concluded that rather than acting precipitously, the Agency should gather enough information to allow an informed decision. To this end, it conducted separate sampling events at the two Reynolds facilities. The Agency then received and reviewed these results and proposed a decision. The EPA believed that it was necessary to accept public comment on the decision and therefore did not use an emergency rulemaking or direct final rule to repeal the delisting as some commenters suggested.

g. Enforcement Issues. Another group of comments raised issues with respect to EPAs enforcement authorities. These types of issues related to a draft of the RCRA 7003 order, the ADPC&E Consent Administrative Order (rescinded September 14, 1997), and allegations that the waste has been illegally disposed. These issues relate to EPAs exercise of its enforcement authority and its enforcement discretion, not to todays decision. However, as a point of information, the Agency is requiring further investigation regarding the disposal of wastes placed at the Hurricane Creek facility. Interim measures have already been implemented to control and monitor environmental concerns at the Hurricane Creek facility. The UAO requires Reynolds to close Cell #1 at the Gum Springs Landfill and the mine pit at Hurricane Creek by installation of an engineered clay cap, which is consistent with Superfund and RCRA presumptive remedies for closure of landfills.

Commenters also suggested that Reynolds may have illegally disposed of hazardous waste for a variety of reasons, for example, claims that the delisting is void by reason of certain perceived failures on Reynolds part. The EPA does not believe that there is a sufficient factual basis to find that the delisting was void because of Reynolds actions or perceived omissions. The decision whether to enforce the terms of the delisting rests within the Agencys discretion.

2. Comments Directly Pertaining to the Repeal of the Delisting

- Technical Corrections;
- Retroactive Application of Repeal;
- Interim Status of the Monofill;
- Public Participation/Notice and Comment;
- Delisting Violations; and
- Delisting vs. LDR issues.

a. Technical Corrections. Reynolds submitted comments which provided a number of clarifications and corrections to the proposed rule. It averred that EPA had inaccurately characterized use of the delisted kiln residue as ''fill material'' in an ''unlined'' mine pit. Further, Reynolds stated that the material was used in mine reclamation activities at the Hurricane Creek facility because the pH of the residue beneficially contributed to neutralization of acidic bauxite mining residues. It claimed that the material was placed in areas of the facility underlain by a substantial clay layer having a very low permeability exceeding EPAs design specifications for hazardous and non-hazardous landfills. The Agency does not adopt the position that the clay layer underlying the mine pit fulfills the EPA design requirements for composite liners for solid waste landfills (*see* section 258.40(b)), nor does it meet the composite liner requirements for hazardous waste landfills (*see* sections 264.301(c)(1), 265.301(a), and 265.19). The mine pit is not equipped with a complete composite liner system which combines an upper liner of a synthetic flexible membrane and a lower layer of soil at least two feet thick as exists in the solid waste landfill at the Gum Springs plant. Neither did Reynolds demonstrate that the method of placement was actually beneficial to neutralization of the acidic bauxite mine residues.

Reynolds further disagrees with EPAs evaluation of the leachate numbers as compared to the health-based numbers. Tables included in the proposed rule seemed to compare health-based limits to delisting levels and actual leachate levels. For clarification, delisting levels are obtained by multiplying health-based levels by a calculated dilution attenuation factor (DAF) (*see* 62 FR 41006 and 62 FR 41007).

Reynolds also complained of the absence of an articulation of EPAs sampling protocol, quality assurance and quality control data used in sampling at the Hurricane Creek and Gum Springs facilities. The EPAs sampling protocol, quality assurance

and quality control information are available and will be placed in the record.

b. Retroactive Application of Repeal. One commenter questioned why the proposed repeal of the delisting only covered future generation of the residue and did not address the waste previously disposed at the Hurricane Creek or the Gum Springs site.

Generally, a rule may only have prospective application. *See Bowen* vs. *Georgetown University Hosp.*, 488 U.S. 204 (1988). Moreover, the residue generated during the effective time period of the delisting was not hazardous waste subject to RCRA subtitle C regulation; therefore, that residue could legally be disposed of as a solid waste. Because EPA is merely repealing the Reynolds delisting exclusion as of the effective date of todays rule, EPAs action will not, in itself, bring the residue generated during the operation of the delisting exclusion back within the RCRA subtitle C regulatory system. However, if Reynolds should actively manage (*i.e.*, treat, store, or dispose) the waste disposed of during the operation of the delisting subsequent to the effective date of this repeal, it would potentially have to manage it as a RCRA subtitle C hazardous waste. *See* 55 FR 8762–63 (National Contingency Plan preamble); and, *Chemical Waste Management, Inc.* vs. *EPA*, 869 F.2d 1526 (D.C. Cir. 1989).

c. Interim Status of Reynolds Landfill Cell #2. Several commenters expressed concern regarding Reynolds ability to obtain interim status as part of the delisting repeal. There was also concern that the Agency was granting Reynolds a *de facto* temporary permit to operate the new landfill cell. Commenters were concerned that a permitting decision was being made without the requisite public participation or public review and comment. Although this issue is not being decided in todays decision to repeal the delisting, it was addressed in the proposal, and thus the Agency feels compelled to offer an explanation.

First, interim status is not granted. It occurs by operation of law without resort to an administrative approval process. *See New Mexico* vs. *Watkins*, 969 F.2d 1122, 1130 (D.C. Cir. 1992). There is no statutory or regulatory provision for public comment and review of a facilitys claim of interim status. Moreover, the State of Arkansas, not EPA, has the authority to determine that the Reynolds facility does not qualify for interim status. Second, Reynolds already has interim status for portions of its facility and the original UAO may constitute a ''new requirement'' resulting in an expansion of that status, section 270.72(a)(6), and (Arkansas Pollution Control and Ecology Commission Regulation No. 23, section 270.72(a)(6)). Third, there are other provisions in the applicable Federal and State laws indicating that Cell #2 may qualify for interim status. This final rule to repeal the delisting exclusion, however, does not constitute a finding that Reynolds has met interim status, permitting or land disposal restriction requirements.

d. Notice and Comment. Four commenters requested that a public hearing be held to discuss issues relating to the Reynolds Metals Company. A number of issues tangential to repeal of the delisting were raised to support these requests. One commenter stated that there was an attempt by the Agency to bypass all of the legally mandated public notice, review, and comment protections by giving Reynolds a back door to Subtitle C interim status. This comment is addressed in the prior subsection. None of the commenters contested the decision to repeal the delisting but instead sought to raise additional issues. The Agency does not believe that it is appropriate to delay the pending repeal decision in order to discuss these issues that go beyond today's final action—the repeal of the delisting—in the context of a public hearing. It is important to note that a public hearing is not mandated by either RCRA or its implementing regulations as relates to today's decision. In providing the public the opportunity to comment on this action, EPA elected to adopt the procedures provided by section 260.20(d) for making a hearing request. That provision, as well as the Administrative Procedures Act, 5 U.S.C. 553 (which governs the Agency's general rulemaking process), provides that it is within the Agency's discretion to determine when a hearing is necessary. The EPA believes that a public hearing on the repeal of the delisting is not necessary and that comments germane to this action from interested parties are being adequately addressed through the notice and comment process.

e. Delisting Violations. Commenters assert that Reynolds has violated the terms of the original exclusion because it did not report information that was ''true, accurate, or complete'' as required by the certification requirements of Reynolds delisting exclusion. They also assert that Reynolds did not report information in its possession which indicated that landfill leachate contained elevated levels of arsenic, cyanide, fluoride, and pH. On this basis, the commenters contend that the delisting is void and has been void for some time prior to today's action. Any decision to take action with regard to an alleged violation is within EPA's enforcement discretion. The EPA does not currently believe that there is a sufficient factual basis to support a finding that violations have occurred that would void the delisting exclusion, *ab initio.* The exclusion explicitly outlines the information Reynolds was required to submit as part of the delisting. Historically, the Agency has not required submission of information about leachate from landfills where a delisted waste has been disposed, nor did it require Reynolds to report this information. Reynolds did report the monofill leachate data to the appropriate State solid waste offices. While it is unfortunate that this information was not brought to EPA's attention immediately, the delay in getting the data to EPA does not necessarily translate into a violation of the certification requirement contained in the Reynolds delisting. Furthermore, the delisting regulations as well as the exclusion provide that the determination whether the certification was false, inaccurate or incomplete lies in the sole discretion of the EPA. Based on current information, EPA does not believe a violation of the certification requirements occurred.

One commenter also stated that the proposed repeal does not include an evaluation of whether Reynolds has violated any solid waste regulations. Regulation of solid waste primarily belongs to the States; therefore, violation of the State's solid waste regulations should be addressed by the State. Inasmuch as this action relates to the limited determination that the Reynolds delisting exclusion should be repealed, further response is unnecessary.

f. Delisting vs. *LDR Determinations.* A commenter asked how EPA harmonizes the findings in the July 14 National Capacity Variance Final Rule, 62 FR 37694 (July 14, 1997) with those in the proposed repeal, particularly with respect to total cyanide, amenable cyanide, and mobilization of cyanide in the alkaline environment of the Reynolds monofill. The commenter states the substantial increases in leachable cyanide or cyanide amenable to being mobilized in the environment, and as discussed in the proposed repeal of Reynolds delisting, seem to contradict the conclusions reached in the July 14 Rule.

There is no contradiction. Land disposal treatment standards require ''substantial treatment''; they do not mandate that a nonhazardous residue

result from treatment (*see* RCRA section 3004(m)(2), 42 U.S.C. 6924(m)(2)). Few residues from treated listed waste have been delisted even after being treated to satisfy LDR requirements (*see* 62 FR 37697). The fact that residue resulting from treatment using Reynolds' process remains hazardous does not mean that it has not been substantially treated. As shown in the July document, 90 percent of the cyanide is removed in the process, PAHs (polycyclic aromatic hydrocarbons) are completely destroyed and eleven metals are immobilized. Further, as the residue must be disposed of consistent with regulations applicable to hazardous wastes, land disposal of the residue will be protective of human health and the environment. As a result of today's rule, Reynolds' treatment residue will once again be subject to hazardous waste controls, notwithstanding the fact that it has been substantially treated.

C. Final Agency Decision

For reasons stated in both the proposal and this notice, EPA believes that exclusion of Reynolds' residue from the treatment of K088 spent potliner from the list of hazardous wastes contained in section 261.32 should be repealed. The EPA, therefore, is repealing the final rule published at 56 FR 67197 (December 30, 1991) granting Reynolds' petition for an exclusion from K088 hazardous waste listing contained in sections 261.31 and 261.32 for certain solid waste generated at Reynolds Metals Company, Gum Springs, Arkansas. As a result of today's rule, Reynolds must manage the treatment residue as a hazardous waste.

III. Effective Date

This rule will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. Although, in the proposed rule, EPA proposed making the final rule effective 60 days after publication in the **Federal Register** to allow Reynolds the opportunity to make arrangements with a hazardous waste disposal facility or claim interim status for its facility, the EPA has good cause to believe that no additional time is necessary for Reynolds to come into compliance with today's rule. In response to the UAO issued on September 8, 1997, Reynolds submitted a revised part A application to ADPC&E dated September 2, 1997, claiming the inclusion of the spent potliner monofill under their interim status for the Gum Springs facility and indicating their agreement to manage the material as a hazardous waste. The UAO is protective and provides that the waste will be disposed of safely, consistent with all hazardous waste requirements. Further, although other issues relating to Reynolds' treatment process may affect a broader audience, this rule affects only Reynolds. Reynolds commented on the proposal and, like other commenters, did not object to the repeal. The EPA finds that the good cause requirement contained in 5 U.S.C. 553 has been met, allowing this rule to be effective immediately upon its publication.

IV. Regulatory Impact Analysis Under Executive Order (E.O.) 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the E.O., which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

The EPA has determined that today's final rule is not a significant rule under E.O. 12866 because it is a site-specific rule that directly affects only the waste treatment residue from the Reynolds' Gum Springs, Arkansas, facility.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.''

Today's rule will directly affect only the Reynolds Company therefore, no small entities will be adversely affected. The EPA certifies, pursuant to the provisions at 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 350l *et seq.*, authorizes the Director of the OMB to review certain information collection requests by Federal agencies. The EPA has determined that this rule will not impose any new recordkeeping or reporting requirements that would require OMB approval under the provisions of the Paperwork Reduction Act of 1980.

VII. Unfunded Mandate Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and

informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or Tribal governments or the private sector.

The EPA has determined that this rule does not contain a Federal mandate 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. Because today's proposed rule directly affects only the Reynolds Gum Springs, Arkansas, facility, EPA finds that the rule does not impose any enforceable duty upon State, local, and Tribal governments. Thus, today's rule is not subject to the requirements of sections 203 and 205 of the UMRA.

List of Subjects in 40 CFR Part 261

Environmental protections, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Section 2002(a), 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 18, 1997.

Robert E. Hannesschlager,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

Appendix IX to Part 261 Table 2—[Amended]

2. Appendix IX to part 261, Table 2—Wastes is amended by removing the entry ''Reynolds Metals Company, Gum Springs, Arkansas'' and its related text.

* * * * *

[FR Doc. 97–31404 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 97–23]

Simplification of Service Contract Filing Requirements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its rules to discontinue the requirement that service contracts be filed in double envelopes. This should reduce duplication and Commission and carrier costs, as well as facilitate the submission of service contract filings at the Commission.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION:

I. Background

The rules of the Federal Maritime Commission (''Commission''), at 46 CFR 514.7(g)(1)(i) and (ii), require service contracts to be filed in double envelopes. This requirement originated with the Commission's initial service contract rules, when all filings were in paper form and was intended to facilitate the separation of service contracts from their associated essential terms filings. Service contract essential terms are now filed electronically in the Commission's Automated Tariff Filing and Information system (''ATFI''). As a consequence, the double-envelope procedure has become superfluous.

The Commission received 38,747 service contract filings during fiscal year 1997. Each filing is now required to be ''filed in single copy contained in a double envelope.'' This proposal will thus reduce by half the number of envelopes that must be filed with and handled by the Commission's staff. This will result in cost savings and processing efficiencies for the industry and Commission.

Because the removal of this obsolete requirement eliminates, rather than creates, a regulatory requirement, this revision is being promulgated as a final rule effective upon publication in the **Federal Register**.

This final rule does not impose any additional reporting or recordkeeping requirements from those which were previously approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, as amended. (OMB Control No. 3072–0055, expires May 31, 1998.)

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this final rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The subject final rule is not a major rule under the Small Business Regulatory Flexibility Act (5 U.S.C. 804(2)) because it will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises.

List of Subjects in 46 CFR Part 514

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight, Freight forwarders, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 3, 8, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1702, 1707 and 1716), the Federal Maritime Commission amends Part 514 of Title 46 of the Code of Federal Regulations as follows:

PART 514—[AMENDED]

1. The authority citation for Part 514 continues to read:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Section 514.7 is amended by revising paragraph (g)(1) to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(g) * * *

(1) *Service contracts.* Within ten (10) days of the electronic filing of essential terms under § 514.17, a true and complete copy of the related contract(s) shall be submitted in form and content as provided by this section and § 514.17, in single copy contained in an envelope, which contains no other material, addressed to: ''Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573.'' The envelope shall state ''This Envelope Contains a Confidential Service Contract.'' If multiple service contracts are filed in an envelope, the pages of each individual contract should be fastened together. The top of each page of a filed service contract shall be stamped ''Confidential.''

* * * * *

By the Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–31320 Filed 11–28–97; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219 and 240

[Docket No. RSOR–6, Notice No. 45; Docket No. RSOR–9, Notice No. 9]

RIN 2130–AA63

Alcohol/Drug Regulations: Technical Amendments; Qualifications for Locomotive Engineers: Correction

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA issues a final rule containing technical amendments to its regulations on control of alcohol and drug use (49 CFR part 219), and amends its regulations on locomotive engineer qualifications (49 CFR part 240) to delete an outdated cross-reference to part 219 in part 240.

EFFECTIVE DATE: This rule is effective December 31, 1997.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to the Docket Clerk, Docket No. RSOR–6, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Room 8201, Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager (RRS–11), Office of Safety, FRA, Washington, DC 20590 (Telephone: (202) 632–3378) or Patricia V. Sun, Trial Attorney (RCC–11), Office of Chief Counsel, FRA, Washington, DC 20590 (Telephone: (202) 632–3183).

SUPPLEMENTARY INFORMATION:

In addition to the technical amendments discussed below, this rule makes several editorial changes to correct typographical errors.

Section by Section Analysis

Section 219.5 Definitions

FRA is deleting the definition of ''Field Manual'' for the reasons discussed below.

Section 219.19 Field Manual

FRA is removing and reserving this section and deleting all references to its alcohol and drug testing field manual (including, as mentioned above, the definition in § 219.5 and a reference in § 219.205(c)(1)), since this 1985 publication is obsolete. At present, FRA has no plans to issue an updated manual.

Section 219.101 Alcohol and Drug Use Prohibited

Paragraph (a)(5)

FRA is adding a new paragraph to codify a 1995 interpretation which made clear that a railroad is prohibited from using an FRA alcohol test result that indicates an alcohol concentration below 0.02 as a basis for federal or company discipline.

Section 40.63(e) of the Department of Transportation's (DOT or the Department) alcohol testing procedures (contained in 49 CFR part 40 (part 40), which is incorporated by reference into part 219) states that in any case where the employee's breath alcohol concentration is less than 0.02, no further testing is authorized under Federal regulations. This is because levels below .02 are considered to be negative results (i.e., not persuasive evidence of alcohol use).

Testing conducted under federal authority is a search subject to the protections of the Constitution of the United States. For this reason, actions taken pursuant to federal rules must be supported by forensically sound evidence. After considering the limits of current technology, DOT determined that .02 was the lowest alcohol concentration measurement at which it could be confident in the result's accuracy. (This is analogous to the drug testing cutoff levels established by the Department of Health and Human Services (DHHS)).

FRA recognizes that railroads retain independent authority to test and discipline on their own. In § 219.1, FRA states that railroads may adopt more stringent standards under their own authority *that are not inconsistent with Part 219,* and in § 219.101(c), FRA accommodates longstanding industry zero tolerance policies by allowing railroads to impose an absolute prohibition on the presence of alcohol or drugs in the body fluids of their employees.

This does not mean, however, that railroads can use a federal test result below 0.02 as a basis for discipline, even under their own authority. For FRA purposes, if a federal test result indicates an alcohol concentration below .02, the test is negative and is not evidence of alcohol abuse. Therefore, a railroad cannot use the federal test result either as evidence in a company proceeding or as a basis for subsequent testing under company authority.

A railroad can take further action only if it has an independent basis for doing so. For example, if a supervisor reasonably suspects alcohol use because the employee smells of alcohol, and the federal test result is below .02, the railroad may use the supervisor's observations as an independent basis for further company testing. Before starting a separate company testing process, the railroad must ensure that the employee understands that the completed federal test was negative, and that no federal violation occurred. The railroad may then conduct a company test (for which use of an FRA or DOT form is *not* authorized), after making the employee aware that any subsequent actions, such as future testing or discipline, are taken under railroad authority only.

Prohibiting use of federal test results below .02 does not interfere with railroad authority. A railroad remains free to test or take further action *if* it has an independent basis for doing so. Commingling federal authority with an employer testing program is impermissible, however, since the employee must always know in advance what his or her procedures, rights and consequences are.

If an employee's test result is between .02 and .039, however, a railroad may take more stringent disciplinary action than the eight hour removal from covered service required under Part 219. In the preamble to its final rule on alcohol testing [February 15, 1994, at 59 FR 7452], FRA stated that ''* * * the bifurcated system [which imposes different consequences for results of .04 or above BAC than for results between .02 and .039] does not preempt a railroad's independent authority to test and discipline under Rule G. As stated in § 219.1, railroads retain the latitude to adopt more stringent standards under their own authority. For instance, railroads retain their authority to discipline an employee under company policy for a .02–.039 test result conducted under FRA authority or to discipline an employee found to have violated Rule G based solely on supervisory observations.''

The crucial distinction is that while a .02–.039 test result does not necessarily indicate impairment, it *does* indicate the presence of alcohol in the employee's system. Thus, a railroad may use a federal test result of .02–.039 as the basis for more stringent discipline under its own independent authority. A separate company test is therefore not required to impose discipline in addition to the federally mandated minimum of eight hours removal from

covered service. Allowing a railroad to impose company discipline for a .02–.039 test result reinforces the rail industry's traditional Rule G prohibition against alcohol use since, as stated above, a .02 standard is the equivalent of zero tolerance because of the technological limitations of current alcohol testing technology.

Section 219.104 Responsive Action

Paragraph (a)(3)

FRA is amending § 219.104(a)(3)(ii) to remove references to pre-employment alcohol testing made obsolete by DOT's suspension of pre-employment alcohol testing on May 10, 1995 [60 FR 24765]. To implement DOT's decision, FRA suspended its pre-employment alcohol testing requirements by adding § 219.501(f) in 1995.

DOT explained the suspension's impact as follows: ''[a]ny employer may [continue to] conduct pre-employment alcohol testing under its own authority. Because of this suspension, employers who wish to continue such testing may not claim a basis in Federal law or regulation for doing so, however.''

Pre-employment drug testing was not affected by this suspension, however, and remains in effect.

Section 219.201 Events for Which Testing Is Required

Paragraph (b)

For clarification, FRA specifies that accidents that would otherwise qualify but are clearly attributable to the actions of a trespasser or trespassers are exempt from mandatory post-accident testing. This exemption spells out what had previously been implied in this subpart, since crewmembers would normally be excluded from testing upon determination that they played no role in the cause or severity of the accident, or that the accident was attributable to vandalism. Consistent with the other exceptions, the trespasser exception holds railroad supervisors to the reasonable inquiry/good faith judgment standard of § 219.201(c) when making determinations.

Section 219.203 Responsibilities of Railroads and Employees

Paragraph (d)(2)

To ensure prompt notification 24 hours a day, railroads shall immediately call the duty officer at the National Response Center (NRC) at (800) 424–8802. The NRC will in turn notify FRA, and work with FRA to ensure compliance with part 219 post-accident testing requirements. Railroads shall also notify FRA by calling FRA's Alcohol and Drug Program Manager, Mr. Lamar Allen, at (202) 632–3378. If the accident occurs after business hours (8:00 a.m. to 4:30 p.m., E.S.T. or E.D.T.), the message will be recorded on voicemail.

This new policy ensures that notification will be made to a staffed phone number regardless of when an accident occurs.

Section 219.207 Fatality

Paragraph (b)

As discussed in § 219.203, FRA's notification policy has changed. This section is amended accordingly.

Section 219.209 Reports of Tests and Refusals

Paragraph (a)(2)

As discussed in § 219.203, FRA's notification policy has changed. This section is amended accordingly.

Section 219.303 Alcohol Test Procedures and Safeguards

Paragraphs (c)–(e)

The blood alcohol testing procedures in this section predate both the alcohol testing procedures in Part 40 and mandatory reasonable suspicion testing. In a final rule published on November 22, 1994 [59 FR 60562], FRA allowed Class II and Class III railroads to continue to use these procedures, but only until their deadlines (July 1, 1995 and January 1, 1996, respectively) for implementation of mandatory Federal reasonable suspicion testing under the Department's alcohol testing procedures. FRA is deleting its blood alcohol testing procedures, which have not been in effect since July 1, 1996. Currently, DOT does not authorize blood alcohol testing. FRA post-accident testing procedures and protocols remain unchanged.

Section 219.601 Railroad Random Drug Testing Programs

Paragraph (b)(2)(ii) and (iii)

When FRA implemented random drug testing in 1989, all railroads were required to test at a minimum annualized rate of 50 percent. In 1994, FRA instituted a performance-based system which allowed the Administrator to determine the random drug and alcohol testing rate for each year based upon the preceding year's reported industry-wide positive rate. New railroads, however, were still required to begin random drug testing at a minimum annual percentage rate of 50 percent of their covered employees, regardless of the minimum rate in effect for the rest of the industry at that time. FRA will now allow new railroads to implement random drug testing at the minimum rate set by the Administrator for the rail industry in the year in which they commence operations. (Since its inception, the minimum testing rate for random alcohol testing has been determined by the Administrator). Accordingly, paragraphs (b)(2)(ii) and (iii) are deleted.

In its random testing plan, a new railroad shall stipulate that its random alcohol and drug testing rates will be set in accordance with the annual minimum rates published by the Administrator yearly in the **Federal Register**.

Section 219.703 Drug Testing Procedures

Paragraph (d)

In its 1994 final rule mandating alcohol testing [59 FR 7358], DOT revised § 40.25(f)(10) to incorporate split sample collection procedures. As part of this revision, DOT deleted a provision in § 40.25(f)(10)(i)(B) on ''shy bladder'' situations, which had allowed the employer to discontinue the collection and conduct a subsequent collection at a later time. Now, in situations where an employee is unable to provide a complete specimen before his or her hours of service expire, Part 40 authorizes the employer only to discontinue the collection.

Previously, in random drug testing, when a covered service employee failed to provide a sufficient urine specimen within his or her hours of service, FRA allowed the employer the option of conducting a subsequent collection either immediately upon the expiration of the employee's required off-duty period, or on an unannounced basis within the next 30 days. FRA is deleting both of these options, to conform with Part 40.

Thus, if an employee's hours of service expire before completion of a random drug test, the railroad must discontinue the collection, and it is not counted as a completed random drug test. The employee has completed his or her obligations. This change does not affect post-accident and for cause testing, however, which are triggered by unanticipated events. As before, in these forms of testing a railroad may exceed hours of service if the railroad uses due diligence to complete testing and reports the excess hours of service.

Section 219.709 Retest

FRA removes and reserves § 219.709, which allowed an employee to make a written request for a retest within 60 days after his or her random drug test had been declared positive by the

railroad's Medical Review Officer (MRO). With the exception of post-accident testing, discussed below, all types of FRA testing (pre-employment, return to duty, follow-up, for cause, and random) now follow the split sample testing procedures contained in Part 40. Under § 40.25(f)(10)(ii)(E), the employee may request a test of his or her split sample in a second DHHS-certified laboratory within 72 hours of having been notified by the MRO of a verified positive drug test result.

For post-accident testing alone, FRA will continue to allow an employee the right to request a retest of his or her original sample(s) by making a written request within 60 days of the date on which the medical review officer declared the employee's test positive. FRA therefore retains § 219.211(i), which lists the procedures for requesting a retest of an employee's post-accident blood and urine samples.

Section219.803 Reporting Drug Misuse Prevention Program Results in a Management Information System

Paragraph (a)

FRA's Management Information System (MIS) requires railroads with 400,000 or more total manhours to submit annual reports summarizing the results of their alcohol and drug misuse prevention programs. To conform the reporting cutoffs for the two systems, FRA amends this section so that the cutoff for the drug program MIS is now identical to that for the alcohol program MIS, namely 400,000 or more total manhours. Formerly this section differed slightly, by requiring railroads with ''more than 400,000 total manhours'' to submit their drug program data.

Appendix B to Part 219—Designation of Laboratory for Post-Accident Testing

On December 1, 1995, in a final rule and notice of determination, FRA announced that it had awarded a contract to Northwest Toxicology, Inc. to conduct post-accident toxicological analysis [60 FR 61664]. Earlier this year, Northwest Toxicology, Inc. changed its corporate name to NWT Inc. FRA is amending Appendix B to conform with the new corporate name of its designated post-accident laboratory and to change a previously published incorrect daytime telephone number. For convenience, the address and corrected telephone numbers for NWT Inc. are reprinted below.

Section 240.119 Criteria for Consideration of Data on Substance Abuse Disorders and Alcohol Drug Rules Compliance

Paragraph (d)(4)

Section 240.119(d)(4)(ii) in FRA's regulations on the qualification and certification of locomotive engineers allows railroads to use the blood alcohol testing procedures found in § 219.303 for return-to-service and follow-up alcohol testing. As explained above, this rule removes § 219.303(c)–(e), since FRA ceased to authorize use of these blood testing procedures as of January 1, 1996. Accordingly, the cross-reference in this section of Part 240 is deleted.

Regulatory Process Matters

This final rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034, and Executive Order 12886.

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1995, FRA has examined this rule and determined that it does not significantly change any previously approved information collection requirements. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612. There are insufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Small Business Regulatory Enforcement and Fairness Act of 1996 requires Federal agencies to consider the impact of regulatory actions on small entities, and to the extent possible, minimize the economic burdens of the Federal action on small entities. FRA has determined that the technical amendments set forth in this final rule will not impose burdens on small entities subject to the requirements of the rule.

FRA finds that prior notice and public comment on the rule would be impracticable, unnecessary, and contrary to the public interest, since the rule contains only technical and editorial changes.

List of Subjects in 49 CFR Parts 219 and 240

Alcohol and drug abuse, Railroad operating procedures, Railroad safety.

Accordingly, for the reasons stated above, FRA amends 49 CFR parts 219 and 240 as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

§ 219.5 [Amended]

2. Section 219.5 is amended by removing the definition for ''Field Manual.''

§ 219.9 [Removed]

3. Section 219.19 is removed and reserved.

4. In section 219.101, in paragraph (c), the phrase ''form imposing'' is corrected to read ''from imposing,'' and a new paragraph (a)(5) is added as follows:

§ 219.101 Alcohol and drug use prohibited.

(a) * * *

(5) If an employee tested under the provisions of this part has a test result indicating an alcohol concentration below 0.02, the test shall be considered negative and is not evidence of alcohol misuse. A railroad shall not use a federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority. A railroad may take further action to compel cooperation in other breath or body fluid testing only if it has an independent basis for doing so.

* * * * *

§ 219.104 [Amended]

5. In section 219.104, paragraph (a)(3)(ii) is amended by inserting the word ''drug'' each time after the word ''pre-employment'' appears and by removing the phrase ''either an alcohol concentration equal to or greater than .04, or''.

6. In section 219.201, paragraph (b) is amended by revising the second sentence to read as follows:

§ 219.201 Events for which testing is required.

* * * * *

(b) * * * No test shall be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and

documented facts by the railroad representative responding to the scene.

* * * * *

7. In section 219.203, paragraph (d)(2) is amended by revising the first sentence to read as follows:

§ 219.203 Responsibilities of railroads and employees.

* * * * *

(d) * * *

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood samples after having been acquainted with the requirements of this subpart, the railroad shall immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8802, and FRA at (202) 632–3378, stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. * * *

* * * * *

§ 219.205 [Amended]

8. In section 219.205, paragraph (c)(1) is amended by removing the last sentence.

9. In section 219.207, paragraph (b) is revised as follows:

§ 219.207 Fatality.

* * * * *

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the railroad shall immediately notify the duty officer at the National Response Center (NRC) at (800) 424–8802 and FRA at (202) 632–3378 by providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

* * * * *

10. Section 219.207(d) is amended by removing the phrase ''and/or'' and adding in its place the word ''and.''

11. In § 219.209, paragraph (a)(1) is amended by revising the second sentence as follows:

§ 219.209 Reports of tests and refusals.

(a)(1) * * * Notification shall immediately be provided to the duty officer at the National Response Center (NRC) at (800) 424–8802 and to the Office of Safety, FRA, at (202) 632–3378.

* * * * *

§ 219.303 [Amended]

12. Section 219.303 is amended by removing and reserving paragraphs (c) through (e).

§ 219.601 [Amended]

13. In § 219.601, paragraph (b)(2)(i) is amended by replacing the semi-colon with a period, paragraph (b)(2)(ii) is removed and reserved; and paragraph (b)(2)(iii) is removed.

§ 219.603 [Corrected]

14. In § 219.603, ''§ 210.102'' is corrected to read ''§ 219.102''.

§ 219.703 [Amended]

15. Section 219.703 is amended by removing paragraph (d).

§ 219.709 [Removed]

16. Section 219.709 is removed and reserved.

§ 219.803 [Amended]

17. Section 219.803(a) is amended by removing the phrase ''with more than 400,000'' and adding the phrase ''that has 400,000 or more'' in its place.

Appendix—B to Part 219 [Amended]

18. In Appendix B—Designation of Laboratory for Post-Accident Toxicological Testing, the corporate name, address, and telephone number of the designated laboratory is revised to read as follows:

Appendix—B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing

* * * * *

NWT Inc., 1141 E. 3900 South, Suite A–110, Salt Lake City, UT 84124, Telephone: (801) 268–2431 (Day), (801) 483–3383 (Night/Weekend).

PART 240—QUALIFICATIONS FOR LOCOMOTIVE ENGINEERS

PART 240—[AMENDED]

1. The authority citation for Part 240 continues to read as follows:

Authority: 49 U.S.C. Chs. 201–213; 49 CFR 1.49.

§ 240.119 [Amended]

2. In Section 240.119 amend paragraph (d)(3) by adding the words ''alcohol and'' before the words ''drug tests'' and remove paragraphs (d)(4) and (d)(5), and redesignate paragraph (d)(6) as paragraph (d)(4).

Issued in Washington, D.C. on November 20, 1997.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 97–31364 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

Docket No. 97102 1250–7275–02; I.D. 092297E

RIN 0648–AK46

Endangered Fish or Wildlife; Special Prohibitions; North Atlantic Right Whale Protection

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

ACTION: Final rule; temporary closure of fishery.

SUMMARY: NMFS issues this final rule to close the Mid-Atlantic and Northeast Coastal segments of the Atlantic pelagic drift gillnet fishery for swordfish, tuna, and shark through July 31, 1998. The swordfish portion of the Atlantic pelagic drift gillnet fishery has been closed since December 5, 1996, under an emergency Magnuson-Stevens Fishery Conservation and Management Act closure that expires on November 26, 1997. This action is necessary to avoid the likelihood that this fishery will jeopardize the continued existence of the northern right whale (*Eubalaena glacialis*), a species listed as endangered under the Endangered Species Act (ESA), until more long-term regulatory measures are issued.

DATES: This closure is effective from 0000 hours, local time, November 27, 1997 through 2400 hours, local time, July 31, 1998. The amendment to 50 CFR 222.34 is effective November 27, 1997 through July 31, 1998.

ADDRESSES: Copies of the May 29, 1997, Biological Opinion (BO), the August 29, 1997, amended BO, and an environmental assessment of this action may be obtained from Gregory Silber, Ph.D., Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gregory Silber, Ph.D. or Michael Payne,

Office of Protected Resources, (F/PR2), NMFS, 1315 East-West Highway, Silver Spring, MD 20910, 301–713–2322; or by facsimile at 301–713–0376.

SUPPLEMENTARY INFORMATION: The Atlantic pelagic fishery (which includes the swordfish, tuna, and shark drift gillnet fishery) is managed by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires an agency to ensure that any agency action is not likely to jeopardize the continued existence of a threatened or endangered species.

One right whale entanglement has been documented in Atlantic pelagic drift gillnet gear. The potential exists for further entanglements in this gear because the geographic distribution of right whales, an endangered species, is close to or overlaps with that of the Atlantic drift gillnet fishery during part of the year.

On May 29, 1997, NMFS issued a BO which concluded that continued operation of the swordfish, tuna, and shark drift gillnet portions of the Atlantic pelagic fishery was likely to jeopardize the continued existence of the northern right whale. This BO identified reasonable and prudent alternatives for the use of drift gillnet gear that would avoid the likelihood of jeopardy for the northern right whale. Identification of these alternatives and a further description of the basis for this action are provided in the notice of proposed rulemaking (62 FR 59335, November 3, 1997).

On August 29, 1997, NMFS issued an amended BO identifying an additional reasonable and prudent alternative which would avoid jeopardy to the northern right whale from the Atlantic pelagic drift gillnet fishery. That alternative is 100–percent observer coverage with expanded time/area closures. The BO issued on August 29, 1997, requires that the driftnet fishery for swordfish, shark, and tunas be prohibited from operating from November 1 to July 31 to avoid jeopardy to northern right whales. NMFS is implementing the time/area closure component of the reasonable and prudent alternative developed through this consultation process.

NMFS, under emergency authority of the Magnuson-Stevens Act, closed the drift gillnet fishery for swordfish in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, from December 1, 1996, through May 29, 1997 (61 FR 64486, December 5, 1996). NMFS extended that closure until November 26, 1997 (62 FR 30775, June 5, 1997).

There is not sufficient time to implement the alternatives identified in the BOs under the Magnuson-Stevens Act. Therefore, to provide necessary protection to the northern right whale, NMFS is implementing this measure under the authority of the ESA on a temporary basis pending development and implementation of a long-term management solution for this fishery consistent with alternatives identified in the BOs.

This rule prohibits vessels operating in the North Atlantic off the coast of the United States in waters south and east of the 100 fathom contour from having on board, fishing with, or otherwise possessing or controlling drift gillnet gear from November 1, 1997, through July 31, 1998, except as authorized under 50 CFR 229.32 (regulations implementing the Atlantic Large Whale Take Reduction Plan that allow for restricted drift gillnet operations targeting sharks in the Southeast United States (62 FR 39157, July 22, 1997)).

A final National Environmental Protection Act document analyzing this action has been prepared and is available to interested parties (see **ADDRESSES**).

This action closes the pelagic driftnet fisheries described in this document and is not intended to close coastal drift gillnet or other gillnet fisheries in Mid-Atlantic or Northeast coastal waters (as defined under 50 CFR 229.2).

Comments and Responses

NMFS received three letters of comment in response to the notice of proposed rulemaking.

One letter voiced support for the closure, support for the finding that the fishery may take right whales, and recognized that the closure comports with the southern closure recommended by the Atlantic Offshore Cetacean Take Reduction Team (AOCTRT). The second letter indicated that certain fisheries need to be closed in certain times of the year as part of a comprehensive effort to address the conservation needs of the northern right whale, and suggested that this action helped meet that need. The third letter voiced concerns about the validity and justification for the closure and recommended, for a variety of reasons, that the closure not be implemented. Specific comments and NMFS responses to them follow.

Comment: One letter noted that the swordfish stock is weakened, and urged NMFS to assess the impact of condensing the drift gillnet fishery into one season. In addition, the letter cautioned NMFS about the increase in longline fishing (as a consequence of fishers departing the drift gillnet fishery) and the potential environmental consequences (e.g., increased bycatch) of such a shift.

Response: NMFS has considered the impact of drift gillnetters converting to longline gear stated in the draft EA for the AOCTRP. NMFS has concluded that there will be negligible impact from the possible conversion of 15 drift gillnetters on the swordfish stock, while catches of marine mammals will decrease.

Comment: Two letters noted that NMFS has not yet implemented an AOCTRP and encouraged NMFS to do so in order to implement effective management of this and other fisheries in accordance with that plan.

Response: NMFS regrets that an AOCTRP has yet to be implemented. However, the complexity of the AOCTRT's draft plan, and the costs to the government to implement the draft plan, changes in stock assessments, concerns about impacts on right whales and other considerations have resulted in delays. NMFS has prepared a draft environmental assessment on the implementation of a AOCTRP, and an announcement of availability of the assessment for public comment was issued by NMFS on November 4, 1997 (FR 59657).

Comment: One letter indicated that due to NMFS' inability to implement the recommendations of the AOCTRT in a timely manner, further closure of the fishery is not warranted.

Response: This closure is necessary to adequately protect northern right whales. Closure of the fishery described in this rule is based on a consultation under section 7(a) of the ESA, not on requirements of the Marine Mammal Protection Act, or the broader marine mammal concerns to be addressed in the AOCTRP. The closure is implementing a reasonable and prudent alternative identified in a BO that resulted from that consultation.

Comment: One letter reiterated previous comments on a AOCTRP, in which the commenter recommended restricting fishing activities on Jeffrey's Ledge and the Great South Channel to reduce the possibility of right whale entanglement.

Response: As noted above, NMFS is working to implement the AOCTRP, and these and other comments are being considered in that process.

Comment: One letter stated that the conclusions of the BO issued on August 29, 1997, are flawed because the risks of a single, additional winter fishing

season are not great, and, therefore, the proposed rule is not justified. Also, because the winter fishery involves only a single vessel, the impacts of allowing this vessel to fish will likely have minimal biological impacts.

Response: NMFS cannot predict how many vessels might participate in the winter fishery. As few as one vessel and as many as ten vessels have fished during the winter fishery although in recent years between one and three vessels have participated. The BO considered the potential for participation in the winter fishery in terms of the anticipated quota which is more directly related to the total number of sets than the number of vessels. Although this action is expected to affect a small number of vessels, perhaps only one, the fishery is such that each vessel is capable of putting out 1.5 miles (2.4 km) of net per set and, depending upon when the quota is reached, has the potential for up to an estimated 50 sets. Thus, NMFS believes that the possibility of right whale entanglement exists even in a small fishery.

Comment: One letter noted that the closure is not necessary because, in more than 25 years of operation by drift gillnet boats in the Mid-Atlantic swordfish fishery, there has never been a documented right whale encounter in the winter fishery.

Response: While no known right whale entanglements have occurred in the Mid-Atlantic portion of the fishery during the winter months for the 16 years for which NMFS has records for the operation of this fishery, one right whale is known to have been entangled in the fishery in July 1993. This indicates that such events do occur with this gear. Also, the timing and the area of observed fishing effort in the Mid-Atlantic during the winter occurs in or near areas of right whale aggregation and in their migration routes. Therefore, the risk associated with fishing in waters off the Mid-Atlantic is higher than fishing elsewhere due to its proximity to the right whale migration route.

In addition, entanglement of large whale species other than right whales has occurred in this fishery. This evidence suggests that there is a risk of interaction with this gear type whenever the distribution of right whales occurs in close proximity to fishing operations.

Photo-identification records indicate that 57 percent of all living right whales bear scars from encounters with fishing gear. It is possible that entanglements of right whales and other large whale species had occurred in this fishery in the past, but went undetected. Observer coverage for this fishery has ranged from 8 percent in 1989 to 87 percent in 1994. Observers have covered the majority of the fleet only in 1994, 1995, and 1996. Prior to 1994, however, observer coverage of the fishery was less than 50 percent.

Comment: One letter stated that if the closure was not in place, the fishery would open in late November, and the fishery would occur further north where the shelf is farther from shore. At that time of year and in that area there are no large concentrations of marine mammals.

Response: Historically, the fishery has not opened prior to January 1. Despite the fact that survey effort is low in many areas, right whale sightings have occurred in all months of the year in the waters of the continental shelf off the New England coast. These include sightings near the shelf break in October, November, and December. NMFS has determined that the greatest potential for interactions occurs during from November 1 through July 31, the period of this closure.

Comment: One letter underscored the economic hardship on the single vessel owner planning to fish in the winter. Specifically, a fisherman involved in the fishery expected the AOCTRP to be implemented; he outfitted his longline boat for winter drift net fishing and made other arrangements to fish in a fishery he assumed would be open. The same fisherman invested in pingers and was interested in determining if pingers were successful in reducing marine mammal mortality in this fishery.

Response: NMFS regrets the economic hardship on fishermen caused by this closure. NMFS' mission is to ensure that endangered species are not jeopardized and some economic consequences may result from management decisions made in pursuit of this mission. NMFS notes that implementation of the draft AOCTRP (something the commenter strongly supports) would likely entail restrictions to the fishery. Therefore, the economic hardship would also have to be endured under that scenario.

NMFS is encouraged by efforts to reduce marine mammal bycatch, including efforts that involve the use of pingers. Pingers have shown some success in reducing entanglement of some marine mammal species, and NMFS is encouraged by the interest in conducting pinger experiments in this fishery. However, the behavior of right whales indicates that they may be less responsive to noise than some other species, and the small sample size makes it difficult to design an experiment that would produce statistically significant results. NMFS notes that pinger experiments are much more likely to produce significant results with regard to common dolphins where expected interaction are much higher.

Finally, such experimentation would be most beneficial if it had fleet-wide participation. Data from an experiment with a small sample (i.e., one vessel and a relatively few fishing days) are of less value than experiments involving controls (e.g., side-by-side comparisons with gear not equipped with pingers) and replicates. That is, fleet-wide participation is needed to ensure samples adequate for meaningful comparisons and statistical analyses. In this same regard, no experiment has been designed for this fishery or its feasibility tested. Also, pingers are expected to be used in other fisheries, and worthwhile data are likely to come from pinger experiments in those fisheries. The vessel owner may be able to make the pingers he purchased available to participants in one of those fisheries.

Comment: The company owning the single active vessel was not notified of the possibility of the closure.

Response: NMFS provided notice of the conclusions of the BOs and provided notice of NMFS' intention to close the fishery by publication of the proposed rule. The commenter, the fishing community, and the general public were thereby notified that NMFS is developing a long-range management solution for the fishery.

Comment: The fishing community was not notified that two fishing seasons were combined into one by NMFS.

Response: In a final rule published in the **Federal Register** on October 24, 1997 (62 FR 55361), establishing regulations on annual quotas for the Atlantic swordfish fishery, NMFS indicated that ''[o]n August 29, 1997, an amendment to the BO was issued, which identified a new reasonable and prudent alternative including time/area closures and 100–percent observer coverage. Pending implementation of a modification to the emergency closure, if such is warranted by the preferred option when identified, NMFS has taken action in this final rule to establish a single season quota for the driftnet swordfish fishery.''

Changes From the Proposed Rule

Based on comments received, there were no substantive changes to the proposed rule. However, the regulatory text of the proposed rule contained an error. While the preamble to the proposed rule clearly stated that the closure would be effective on November

27, 1997, the regulatory text stated that the effective date of the closure would be November 1, 1997. The closure is in effect starting November 27, 1997. This change is reflected in the regulatory text of the final rule.

Classification

This final rule is necessary to protect the northern right whale in accordance with the requirements of the ESA.

NMFS prepared an EA for this final rule with a finding of no significant impact on the human environment. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for the Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received that changed the basis for the original certification. As a result, no Regulatory Flexibility Analysis has been prepared.

NMFS has determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the coastal zone management programs of the Atlantic and Gulf of Mexico states that have approved programs. This determination was submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act.

As noted above, this rule implements an alternative identified in a BO, and is necessary to avoid jeopardy to the northern right whale. Therefore, failure to implement the closure identified in this action expeditiously would be contrary to the public's interest. Also as noted above, the swordfish portion of the Atlantic pelagic drift gillnet fishery has been closed since December 5, 1996, under an emergency Magnuson-Stevens Fishery Conservation and Management Act closure. Thus, this portion of the fishery has not been active since that time. This action would have no impact on drift gillnetters directly fishing for sharks in the Southeast because participants in the directed shark fishery are covered by regulations implementing the Atlantic Large Whale Take Reduction Plan and would not be further restricted by this action. In addition, the fishery for large coastal sharks was closed on July 21, 1997, through December 31, 1997, because that fishery reached its allowable quota (62 FR 32942, July 21, 1997). Based on recent records and the lack of requests for observer coverage as required under the Marine Mammal Protection Act, there is no history of a directed gillnet fishery for tunas in the winter and early summer. NMFS will rapidly communicate the dates of this closure to fishing interests through the FAX network and NOAA weather radio. Accordingly, the Assistant Administrator for Fisheries finds good cause, under 5 U.S.C. 553(d)(3), to waive the 30-day delay in the effective date normally required by section 553(d) of the Administrative Procedures Act.

This rule does not contain policies with federalism implications to warrant preparation of a federalism assessment under Executive Order 12612. In addition, this rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act.

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

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 222 is amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart D, § 222.32 also issued under 16 U.S.C. *et seq.*

2. In subpart D, a new § 222.34 is added to read as follows:

§ 222.34 Restrictions on taking right whales incidental to fishery operations.

From November 27, 1997, through July 31, 1998, it is unlawful for any person or vessel subject to the jurisdiction of the United States to have on board a vessel, to fish with, or otherwise to posses or control drift gillnet gear, as defined in 50 CFR 229.2, in the North Atlantic Ocean in waters off the coast of the eastern United States south and east of the 100 fathom contour except that such gear may be used in southeast waters, as defined under 50 CFR 229.2, if that gear is used in compliance with the requirements of 50 CFR 229.32(f).

[FR Doc. 97–31472 Filed 11–25–97; 4:32 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 230
Monday, December 1, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 70

[Docket No. PY–97–004]

Voluntary Poultry and Rabbit Grading Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the regulations governing the voluntary poultry and rabbit grading programs. The proposed revisions would simplify the definition about feathers on poultry, provide an alternative grademark for poultry and rabbit products, provide for the use of a ''Prepared From'' grademark to officially identify specialized products that originate from officially graded poultry, change the sample plan used by graders, and increase the lighting intensity required at grading stations. From time to time, sections in the regulations are affected by changes in poultry processing technology. This rule updates the regulations to reflect these changes.

DATES: Comments must be received on or before January 30, 1998.

ADDRESSES: Send written comments to Douglas C. Bailey, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0259, 1400 Independence Avenue, SW, Washington, D.C. 20250–0259. Comments received may be reviewed at this location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays. State that your comments refer to Docket No. PY–97–004.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, 202–720–3271.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities as defined in the RFA (5 U.S.C. 601). There are some 200 plants using the Agency's voluntary poultry grading services and many of them are small entities.

The definition *Free from protruding pinfeathers, diminutive feathers, or hairs* would be simplified by removing the words ''pinfeathers'' and ''diminutive,'' words no longer commonly used when discussing feathers and poultry quality. Additionally, in the definition for *Ready-to-cook poultry,* the word ''pinfeathers'' would be changed to ''feathers.'' These changes merely reflect current practices and should not have any additional economic impact on entities using voluntary poultry grading services.

One proposal would allow poultry and rabbit processors to use a shield displayed in three colors as an alternative form of the USDA grademark to officially identify USDA graded products. Similarly, another proposal would allow producers of products originating from A quality poultry, for which there are no U.S. grade standards, to use a ''Prepared From'' grademark on packaging materials. These proposals would give processors greater flexibility in packaging and marketing their products. Since it is at the processors' discretion to use these proposals, any economic impact caused by these proposals will be by the choice of the processors.

Changing the sampling plan would enable graders to select a more representative sample upon which to base grading decisions. The economic impact should be no greater than under the current sampling plan. Increasing the lighting intensity required at grading stations would enhance the grader's ability to visually evaluate products. Both proposals would provide processors with fairer, more accurate evaluations. Better lighting could also help avoid the economic burden of reprocessing product or diverting product unnecessarily downgraded because of inadequate lighting. The costs, if any, for increasing the lighting intensity should be minor.

For the above reasons, the Agency has certified that this action would have no economic impact on small entities.

Background and Proposed Changes

Poultry and rabbit grading are voluntary programs provided under the Agricultural Marketing Act of 1946, as amended, and are offered on a fee-for-service basis. They are designed to assist the orderly marketing of poultry and rabbits by providing for the official certification of quality, quantity, class, temperature, packaging, and other factors. Changing processing technology requires that the regulations governing poultry and rabbit grading be updated.

Freedom from feathers is one of the factors considered in poultry grading. The definition *Free from protruding pinfeathers, diminutive feathers, or hairs* (§ 70.1) would be revised by removing the words ''pinfeathers'' and ''diminutive.'' These words are no longer commonly used when discussing feathers and poultry quality. Nor are they needed to achieve the quality standards set by the regulations. To be consistent, in the definition *Ready-to-cook poultry*, the word ''pinfeathers'' would be changed to ''feathers.''

The Agency is proposing to permit the use of alternative grademarks (§ 70.51) so processors can have additional flexibility in packaging and marketing their products. Processors wanting to use a USDA grademark to identify their consumer-pack USDA graded poultry and rabbit products would have the option of using the current grademark or a proposed grademark containing horizontal bands of three colors. Processors who use USDA Grade A poultry to produce specialized poultry products, for which there are no U.S. grade standards, would be permitted to use a ''Prepared From'' grademark on the specialized products. The proposal would also reorganize the section for clarity.

The regulations contain a sampling plan to guide graders when they select samples upon which to base grading decisions (§ 70.80(b)). The sampling plan would be changed so that the sample size more closely reflects the size of the lot being sampled, thereby fostering a more representative sample of each lot.

The regulations also specify the lighting intensity required at grading stations in the processing plants (§ 70.110). The lighting intensity would be increased from 50-foot candles to 100-foot candles to improve the graders ability to visually evaluate the products being graded. This is the same intensity required by USDA's Food Safety and Inspection Service at all of their inspection stations.

Effective December 4, 1995, the voluntary U.S. grade standards were removed from the Code of Federal Regulations (CFR) as part of the National Performance Review program to eliminate unnecessary regulations and to improve those that remain in force. The voluntary standards will continue to be administered by AMS and will maintain their existing numbering system. Hence the voluntary poultry and rabbit grade standards are referred to as AMS 70.200 *et seq.* and AMS 70.300 *et seq.*, respectively.

List of Subjects in 7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

Accordingly, under the authority of Title 7, Chapter I, it is proposed that 7 CFR part 70 be amended as follows:

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

1. The heading for part 70 is revised to read as set forth above.

1a. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In § 70.1, the definition for *Ready-to-cook poultry* is amended by removing the word ''pinfeathers'' and adding in its place the word ''feathers'' and the definition for *Free from protruding pinfeathers, diminutive feathers, or hairs* is revised to read as follows:

§ 70.1 Definitions.

* * * * *

Free from protruding feathers or hairs means that a poultry carcass, part, or poultry product with the skin on is free from protruding feathers or hairs which are visible to a grader during an examination at normal operating speeds. However, a poultry carcass, part, or poultry product may be considered as being free from protruding feathers or hairs if it has a generally clean appearance and if not more than an occasional protruding feather or hair is evidenced during a more careful examination.

* * * * *

3. Section 70.51 would be revised to read as follows:

§ 70.51 Form of grademark and information required.

(a) *Form of official identification symbol and grademark.* (1) The shield set forth in Figure 1 of this section shall be the official identification symbol for purposes of this part and when used, imitated, or simulated in any manner in connection with poultry or rabbits, shall be deemed prima facia to constitute a representation that the product has been officially graded for the purposes of § 70.2.

(2) Except as otherwise authorized, the grademark permitted to be used to officially identify USDA consumer-graded poultry and rabbit products shall be of the form and design indicated in Figures 2 through 4 of this section. The shield shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures.

(3) The ''Prepared From'' grademark in Figure 5 of this section may be used to identify specialized poultry products for which there are no official U.S. grade standards, provided that these products are approved by the Agency and are prepared from U.S. Consumer Grade A poultry carcasses, parts, or other products that comply with the requirements of AMS § 70.220. All poultry products shall be processed and labeled in accordance with 9 CFR part 381.

(b) *Information required on grademark.* (1) Except as otherwise authorized by the Administrator, each grademark used shall include the letters ''USDA'' and the U.S. grade of the product it identifies, such as ''A Grade,'' as shown in Figure 2 of this section. Such information shall be printed with the shield and the wording within the shield in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

(2) Except as otherwise authorized, the bands of the shield in Figure 4 of this section shall be displayed in three colors, with the color of the top, middle, and bottom bands being blue, white, and red, respectively.

(3) The ''Prepared From'' grademark in Figure 5 of this section may be any one of the designs shown in Figures 2 through 4 of this section. The text outside the shield shall be conspicuous, legible, and in approximately the same proportion and close proximity to the shield as shown in Figure 5 of this section.

(c) *Products that may be individually grade marked.* The grademarks set forth in Figures 2 through 4 of this section may be applied individually to ready-to-cook poultry, rabbits, and specified poultry food products for which consumer grades are provided in the U.S. Classes, Standards, and Grades for Poultry and Rabbits, AMS §§ 70.200 and 70.300 *et seq.*, respectively, or to the containers in which such products are enclosed for the purpose of display and sale to household consumers, only when such products qualify for the particular grade indicated in accordance with the consumer grades.

BILLING CODE 3410–02–P

Figure 1

Figure 2

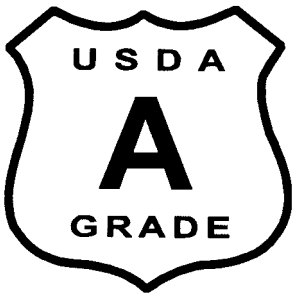

Figure 3

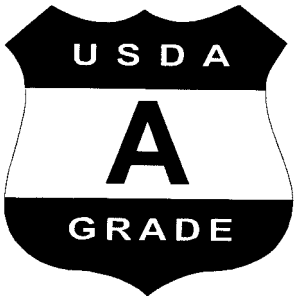

Figure 4

Figure 5

BILLING CODE 3410–02–C

4. In § 70.80, the table would be revised to read as follows:

§ 70.80 General.

* * * * *

Containers in lot	Containers in sample
1–4	All.
5–50	4
51–100	5
101–200	6
201–400	7
401–600	8
For each additional 100 containers, or fraction thereof, in excess of 600 containers.	Include one additional container.

5. In § 70.110, paragraph (b) would be revised to read as follows:

§ 70.110 Requirements for sanitation, facilities, and operating procedures in official plants.

* * * * *

(b) With respect to grading services, there shall be a minimum of 100-foot candles of light intensity at grading stations; and acceptable means, when necessary, of maintaining control and identity of products segregated for quality, class, condition, weight, lot, or any other factor which may be used to distinguish one type of product from another.

Dated: November 20, 1997.

Thomas A. O'Brien,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97–31178 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–287–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. This proposal would require repetitive inspections to detect any discrepancy in the sealwire of the fireguards of the engine fire shut-off system, and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent inadvertent closure of the fire shut-off valves due to ineffective or absent sealwires, which could result in in-flight engine shutdown.

DATES: Comments must be received by December 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–287–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Service B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–287–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–287–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes. The RLD advises that it received reports of inadvertent closure of the fire shut-off valves, which resulted in engine flameouts during flight. Investigation by the manufacturer indicated that the sealwires (safety wires) of the engine fireguards may have been missing, or may not have operated correctly. Inadvertent closure of the fire shut-off valves due to ineffective or missing

sealwires could result in in-flight engine shutdown.

Other Related AD

In 1982, the FAA issued AD 82–16–02, amendment 39–4424, applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, to require a one-time inspection of the sealwires and microswitches to detect discrepancies, and repair, if necessary.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F28/76–20, dated January 1, 1979, which describes procedures for repetitive inspections to detect any discrepancy in the sealwire of the fireguards of the engine fire shut-off system, and repair, if necessary. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA No. 1979–007/2 (A), dated February 28, 1997, in order to assure the airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 49 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $2,940, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Aircraft B.V.: Docket 97–NM–287–AD.

Applicability: Model F.28 Mark 1000, F.28 Mark 2000, F.28 Mark 3000, and F.28 Mark 4000 series airplanes; all serial numbers; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 inadvertent closure of the fire shut-off valves due to ineffective or absent sealwires, which could result in in-flight engine shutdown, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection of the engine fire shut-off system to detect any discrepancy in the sealwire of the fireguards, in accordance with Fokker Service Bulletin F28/76–20, dated January 1, 1979. If any discrepancy is detected, prior to further flight, repair it in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight hours.

(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 request 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.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1979–007/2 (A), dated February 28, 1997.

Issued in Renton, Washington, on November 21, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31331 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require removal and replacement of the center screw of the crew seat belt buckle. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the center screw of the crew seat belt buckle, which could result in injury to the flightcrew during an emergency landing.

DATES: Comments must be received by December 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230, Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–114–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received a report indicating that, during an inspection, the center fixing screw of the flight crew restraint system was found to be loose. Investigation revealed that, during assembly of the release buckles, the center fixing screw could be contaminated, which would prevent the securing Loctite from curing. This condition, if not corrected, could result in injury to the flightcrew during an emergency landing.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–25–196, dated November 12, 1996, which describes procedures for removal and replacement of the center screw of the crew seat belt buckle. (The Dornier service bulletin references Aerospace Restraint Company (ARC) Service Bulletin 1180002–25–01, dated October 11, 1996, as an additional source of service information for accomplishment of the removal and replacement.) Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 97–001, dated January 16, 1997, in order to assure the airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GmbH: Docket 97–NM–114–AD.

Applicability: Model 328–100 series airplanes equipped with Aerospace Restraint Company (ARC) restraints having part number (P/N) 1180002–403–100, part serial number 0101 up to and including 0315 inclusive, 0328, and 0329; 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 screw of the crew seat belt buckle, which could result in injury to the flightcrew during an emergency landing, accomplish the following:

(a) Within 90 days after the effective date of this AD, remove and replace the center screw of the crew seat belt buckle in accordance with Dornier Service Bulletin SB–328–25–196, dated November 12, 1996.

Note 2: The Dornier service bulletin references Aerospace Restraint Company (ARC) Service Bulletin 1180002–25–01, dated October 11, 1996, as an additional source of service information for accomplishment of the removal and replacement.

(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 request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: 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.

Note 4: The subject of this AD is addressed in German airworthiness directive 97–001, dated January 16, 1997.

Issued in Renton, Washington, on November 21, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31332 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–152–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes. This proposal would require repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage.

DATES: Comments must be received by December 31, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–152–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–152–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes. The DGAC advises that it received a report indicating that, during full-scale fatigue testing on a Model A320 test article, fatigue cracks were found in the structure at the wing/fuselage joint area cruciform fitting. The cracking occurred after 104,720 and 116,536 simulated flights. This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the wing/fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996, which describes procedures for repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective action, if necessary. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 96–299–094(B), dated December 18, 1996, in order to assure the airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Differences Between the Proposal and Relevant Service Information

Operators should note that, unlike the procedures described in the referenced service bulletin, this proposed AD would not permit further flight with cracking detected in the wing/fuselage joint cruciform fittings. The FAA has determined that, due to the safety implications and consequences associated with such cracking, all fittings that are found to be cracked must be repaired prior to further flight.

Cost Impact

The FAA estimates that 132 of U.S. registry would be affected by this proposed AD. It would take approximately 8 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $63,360, or $480 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 97–NM–152–AD.

Applicability: Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 detect and correct fatigue cracks on the wing/fuselage joint cruciform fittings, which could result in reduced structural integrity of the wing/fuselage, accomplish the following:

(a) Prior to the accumulation of 28,000 total landings, or within 60 days after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the wing/fuselage joint cruciform fittings, in accordance with Airbus Service Bulletin A320–57–1051, Revision 01, dated March 21, 1996.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected, prior to further flight, repair it in accordance with the service bulletin. Thereafter, repeat the inspection at the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If the crack that was detected and repaired was greater than 2.5 mm: Repeat the inspection prior to the accumulation of 32,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 32,000 landings.

(ii) If the crack that was detected and repaired was less than or equal to 2.5 mm: Repeat the inspection prior to the accumulation of 28,000 landings since accomplishment of the repair; and thereafter at intervals not to exceed 20,000 landings.

(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 request 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.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–299–094(B), dated December 18, 1996.

Issued in Renton, Washington, on November 21, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31333 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF STATE

22 CFR Parts 22, 51, and 53

[Public Notice 2653]

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the fees for consular services that are proposed to take effect on February 1, 1998, and makes appropriate implementing and other related changes in affected portions of title 22 of the Code of Federal Regulations. Specifically, the rule makes changes in the Schedule of Fees for Consular Services (''Schedule of Fees'' or ''Schedule'') published in 22 CFR section 22.1 and makes technical changes to 22 CFR Part 51 (concerning passport fees) and 22 CFR Part 53. The changes to the Schedule of Fees include adjustments to existing fees and a new processing fee for diversity visa applicants (see 22 CFR 42.33(i)), for which the proposed rule was published in the **Federal Register** on June 16, 1997. The primary objective of the proposed adjustments to the Schedule of Fees is to ensure that the Department recovers the costs of consular services through user fees to the maximum extent appropriate and permitted by law. As a result of new data on the cost of services, the passport fee is being lowered while most other fees are being increased. In addition, the proposed Schedule of Fees is being restructured and streamlined. Fees for antiquated services no longer performed are being removed and fees for other services are being consolidated or more appropriately located, making the proposed Schedule easier to read and understand. Consular services that will be performed for no fee are being added to the Schedule to facilitate tracking the costs of these services and to inform the public of all significant consular services provided by the Department.

DATES: Written comments must be received on or before December 31, 1997.

ADDRESSES: Interested persons are invited to submit comments to: Office of the Executive Director, Bureau of Consular Affairs, Room 4820A, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Sally Light, Office of the Executive Director, Bureau of Consular Affairs, telephone (202) 647–1148; telefax (202) 647–3677.

SUPPLEMENTARY INFORMATION:

Background

The majority of the Department of State's consular fees are established pursuant to the general user charges statute, 31 U.S.C. 9701, and/or 22 U.S.C. 4219, which, as implemented through Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to establish fees to be charged for official services by embassies and consulates. Fees established under these authorities include fees for immigrant visas, for expedited passport processing, for fingerprints and FBI name checks, and for overseas consular services. In addition, a number of statutes address specific fees: Passport issuance fees are authorized by 22 U.S.C. 214, as are fees for the execution of passport applications. Section 636 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009–703–704 (Sept. 30, 1996), authorizes establishment of a diversity visa application fee to recover the full costs of the visa lottery conducted pursuant to Sections 203 and 222 of the Immigration and Nationality Act (''INA''), 8 U.S.C. 1153, 1202. (The Department published a proposed rule establishing that fee on June 16, 1997.) Nonimmigrant visa reciprocity fees are authorized pursuant to Section 281 of the INA , 8 U.S.C. 1351. The establishment of a nonimmigrant visa processing fee for machine readable visas (commonly known as the ''MRV fee'') notwithstanding Section 281 of the INA is authorized by Section 140(a) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103–236, 108 Stat. 399 (April 30, 1994), as amended. Certain persons are exempted by law from payment of specific fees. (These statutory exemptions are noted in the fee schedule.) Various statutes also permit the Department to retain some of the consular fees it collects. These are, at present, the MRV fee, the passport expedite fee, the fingerprint fee, and the diversity visa lottery fee.

With the exception of nonimmigrant visa reciprocity fees, which are established based on the practices of other countries, all consular fees are established on a basis of cost recovery and in a manner consistent with general user charges principles, regardless of the specific statutory authority under which they are promulgated. The Department of State is required to review consular fees periodically to determine the appropriateness of each fee in light of

applicable provisions of OMB Circular A–25, which addresses the establishment of user charges. Those guidelines state that services that directly benefit individuals, organizations, or groups should be paid for by the users rather than general taxpayers. Services performed for the primary benefit of the general public or the U.S. Government, however, should be supported by tax revenues. The changes set forth in the proposed Schedule of Fees reflect those guidelines. For example, new user fees have been added for a few consular services which directly benefit individuals but now are provided for no fee at taxpayer expense.

Consistent with OMB Circular A–25, from September 1995 to September 1996, the Department conducted a cost-of-service study to determine the direct and indirect costs associated with each consular service the Department provides, using fiscal year 1995 data. The study was supervised by the Bureau of Consular Affairs and performed with the assistance of an outside contractor. The contractor and Department staff surveyed and visited domestic and overseas consular sites handling approximately half of all consular services worldwide in FY 1995. In conducting the cost study, the contractor used the activity-based costing (''ABC'') methodology, which measures the cost and performance of activities, resources, and cost objects related to the delivery of specific products and services. The ABC methodology was used to determine direct labor costs to deliver each identified consular service. The costs of materials and supplies, overhead support, and general and administrative support were also included, to ensure that the full cost of service was captured. This methodology resulted in a more accurate determination of the Department's costs in providing consular services, and will permit better management of such costs and services in the future. Detailed information concerning the methodology of the study is available from Bureau of Consular Affairs.

Based on this effort and subsequent follow-up work, the Department is now proposing adjustments to the Schedule of Fees as shown below. The Schedule will take effect in FY 1998. Future adjustments to the Schedule of Fees will be made as appropriate.

Because the proposed Schedule of Fees has been restructured and streamlined, a direct side-by-side comparison with the current schedule, last updated in 1991, is not possible. Instead, each fee on the proposed schedule is cross-referenced to the appropriate item number on the current fee schedule (22 CFR part 22.1) to facilitate comparison, or identified as a new fee. (These cross-references will not be included in the final rule.) Major changes in the schedule are discussed below.

Passports

The current fee schedule shows a fee of $10 to execute a passport application; a fee of $55 for issuance of a ten-year passport; and a fee of $40 for issuance of a five-year (child's) passport. The new schedule shows a $15 execution fee. Passport issuance fees are lowered, however, from $55 to $45 for first-time issuance to adults, and to $40 for renewals. The fee for issuance of five-year passports for minors will be lowered from $40 to $25 in all cases. Processing and issuance of a child's passport costs at least as much as an adult passport (because extensive identification checking is required). Rapid changes in the physical appearance of children and the potential for child custody issues also dictate issuance of a five- rather than ten-year validity passport to children under the age of 16. The shorter validity of a child's passport was the key factor in keeping the fee below that of an adult's passport notwithstanding the similar processing costs.

The new passport fees will fully recover the costs of passport application processing. In addition, consistent with long-standing Department practice, a portion of the fee will recover the cost of all emergency citizens services performed overseas, including assistance in cases of arrest, detention, death, or serious illness or accident abroad, and the costs of certain nonemergency citizens services, such as passport amendments and U.S. citizens registering their presence at overseas posts, that the Department believes are appropriately allocated to all passport users, and/or for which separate fees are impracticable. (Such reallocations are to all passports issued, whether first-time issuances or renewals.)

While the cost of overseas passport processing is high, the fee reduction is possible because the vast majority of passports are issued domestically. It generally costs the Department less to provide a service domestically than overseas, and there have been significant improvements in the efficiency and productivity of the Department's higher-volume domestic passport operations.

Passport Expedite Fee

The proposed Schedule increases the passport expedite fee from $30 to $35. This fee will recover the costs of guaranteeing a maximum turn-around time of three business days to qualified users. Expedited service will be provided, and the expedite fee will be charged, to all customers seeking in-person service at a U.S. Passport Agency, with one minor exception. The expedite fee will not be charged when the Department determines that the applicant is required to apply at a U.S. Passport Agency. This generally will be in complex citizenship cases where in-person services are necessary for adjudication of the application. The Department continues to encourage applicants to use lower-cost passport acceptance agents, drop boxes, and mail-in services whenever possible. A passport may be obtained for the basic processing and issuance fee by applying in the normal course of business, while the more expensive, expedited service is available for those with a special need for urgent issuance.

Adjudication of Citizenship for Undocumented Passport Applicants Born Overseas

A new fee is proposed for citizenship adjudication for previously undocumented passport applicants born overseas. The cost of these complex citizenship adjudications has until now been allocated to the passport fee. The Department has concluded that this service should instead be broken out of the passport fee and made the subject of a separate fee.

The Immigration and Naturalization Service (INS) currently charges $100 to adjudicate such citizenship cases in connection with an application for a certificate of citizenship. The Department has observed that previously undocumented applicants whose primary interest is in obtaining a citizenship adjudication, rather than a passport, often apply for a passport instead to avoid paying the INS citizenship adjudication fee. The Department's FY 1995 average cost to adjudicate citizenship is at least $80. These cases involve a different and often more complex adjudication process than passport applications of previously documented citizens; for example, additional interviews and evidence may be required and more complex legal issues may be involved. The proposed fee of $100 will equalize the INS and State Department fees for the same service and ensure full recovery of the Department's costs of providing this service. It also will

ensure that the actual users of the service, rather than all passport applicants, bear the cost of these complex citizenship adjudications.

Passport Waiver

The Department at present has a $100 fee for waiving the requirement that a U.S. citizen travel in or out of the United States on a U.S. passport. The proposed Schedule reallocates the cost of processing passport waivers to the passport fee, thereby making passport waivers a no-fee service. This reallocation is consistent with the fact that virtually all users of this service are or will be passport holders, and with the Department's general practice of allocating the cost of emergency consular services to the passport fee. In addition, the reallocation eliminates the administrative costs of collection and addresses concerns over the fairness of the separate fee expressed by many Americans whose passports have been lost or stolen. Those who must travel immediately despite the theft or loss of a passport, or because of a genuine emergency, will no longer be subject to a $100 fee in order to receive a passport waiver.

The Department is not, at this time, amending 22 CFR section 53.2(h), which provides for the collection of a fee for the waiver of the passport requirement as specified in the Schedule of Fees. Changes may be made to section 53.2(h) at a later time, however.

Report of Birth Abroad of a Citizen of the United States

The Department at present charges a $10 fee for issuance of a Report of Birth Abroad of a Citizen of the United States which is proof of U.S. citizenship (see 22 U.S.C. 2705). The average cost of providing this service is in fact considerably higher (close to $180), in part because of cases involving parents who lived overseas for long periods of time and whose prior residency in the United States must be confirmed. The proposed Schedule increases the fee for a Report of Birth Abroad of a Citizen of the United States to $40, and reallocates the remaining costs of this service to the passport fee. The resulting increase in passport fees is negligible. The Department believes that this combined approach (adjusting the fee to recover more of the costs of service from the actual users and reallocating the remaining costs to the passport fee) appropriately balances the policy of placing costs on actual users with the strong public policy interest in encouraging all U.S. citizens whose children are born abroad to obtain a Report of Birth Abroad of a Citizen of the United States when the child is born.

Emergency Overseas Assistance for American Citizens

The primary responsibility of U.S. consular officers overseas is the protection and welfare of American citizens. No-fee services performed in instances of arrest, missing persons, and destitution are listed on the proposed Schedule for the information of the American traveler. As noted in the discussion of the passport fee, the costs for these services will continue to be reallocated to the passport fee, consistent with long-standing Department practice. This ensures that any American traveling abroad may obtain emergency consular services without regard to ability to pay for the actual services rendered.

The current Schedule lists services relating to death and estates of Americans overseas in several sections. The proposed Schedule consolidates all death and estate services in one new section. Services related to the death of an American citizen are performed for no fee. The costs of these services have been reallocated to the passport fee.

Two death and estate fee items have been added to the proposed Schedule. The first is a $700 fee for services required for the transshipment of the remains of a foreign national through the United States. This service is performed infrequently but at a high cost, which is more appropriately paid by the next-of-kin rather than by the American taxpayer.

A fee for acting as provisional conservator of estates of U.S. citizens with a value of over $10,000 also has been added to the proposed Schedule. Consular officers will continue where necessary to take possession of and inventory all estates of Americans who die overseas. But overseeing the appraisal, sale, and final disposition of estates over $10,000, disbursing funds, and carrying out other legally related estate business is more appropriately handled by an attorney. Such estate services are performed for the benefit of the next-of-kin and should be paid for by the users rather than by the taxpayer.

Services Relating to Vessels and Seamen

The provision of consular services relating to vessels and seamen has fallen dramatically in recent years. Accordingly, maritime services have been consolidated into three fee items on the proposed Schedule of Fees to more accurately reflect the nature, volume, and cost of performing the services.

Documentary Services for American Citizens

Documentary services are listed in several sections of the current Schedule of Fees. The proposed Schedule consolidates all documentary services in one section. Current item 46, noting of a negotiable instrument, is performed so infrequently that it will no longer be listed as a separate service but will be charged for as a notarial service. Current item 75, typing a copy or extract of a document, has been dropped from the Schedule on the assumption that documents are now photocopied and/or certified rather than retyped.

The fee for notarial services is currently $10. In the new Schedule, it will be increased to $55, reflecting the high cost of performing such services overseas. For many years, the notarial fee has been held well below the actual cost of performing this service by reallocating part of the costs of performing notarials to the passport fee. Most notarials performed at embassies and consulates overseas are for the benefit of individual Americans and foreign nationals engaged in legal or business transactions, however. These are not emergency services and there is no particular public interest in ensuring that the service is obtained from a U.S. consulate. In many cases, the user can obtain the necessary notarial service from a local provider, but uses a U.S. consular officer because the fee is lower. Thus the artificially low fee for notarial services has the general effect of increasing the notarial workload of our overseas posts. The Department has concluded that the costs of this service should be recovered in full from the individuals for whom they are actually performed rather than in part from all passport holders.

In the case of certifications, however, for which the cost of service is approximately the same as for notarials, the Department proposes to continue to set the proposed fee below the actual cost of service, and to reallocate the remainder of the cost to the passport fee. Certifications are almost exclusively of official U.S. government documents issued by embassies and consulates overseas (e.g., reports of births and deaths occurring overseas). The need for such documents generally arises from the fact of an American citizen's travel abroad, and there is a significant public interest in certifying such documents' authenticity at a relatively minimal cost.

In addition, the Department has reviewed its existing exemptions from documentary service fees and is eliminating those that are not required by law or that do not serve any

significant public interest. Others are being modified or clarified.

Visas

The structure of the immigrant visa application processing and issuance fees remains the same, although the fees are being increased to reflect the actual costs of service. In addition, the Department is instituting an additional fee, in the nature of a surcharge, for diversity visa applicants. The final rule for the diversity visa fee was published in the **Federal Register** on August 8, 1997. This additional fee, which will recover the lottery costs from those lottery entrants who actually apply for diversity visas, was authorized by Section 636 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, 110 Stat. 3009–703–704 (Sept. 30, 1996). Administration of the lottery is part of the cost of allocating such visas, and it would be impracticable to impose a fee on all visa lottery entrants (technically, visa ''petitioners'', given the millions of entrants, the problems of collecting a uniform fee from individuals all over the world (who will have varying access to international currency), and the burden of having to collect and account for what would be a very small fee from a large number of persons.

Since 1994, the Department has collected a nonimmigrant visa (NIV) application processing fee from NIV applicants at posts issuing machine readable visas (MRVs), commonly known as the ''MRV'' fee. The MRV technology is now installed worldwide, as are improved information management systems for ensuring that all visa applicants are checked against the visa lookout system. The NIV/MRV application fee, originally set at $20, will increase to $45. This amount is based on the volume-weighted average cost of processing a nonimmigrant visa, including border crossing cards, crew visas, treaty trader/investor visas, fiancé visas, and petitions for intracompany transferee and temporary worker visas, using the new MRV and enhanced lookout technologies. The proposed new fee is significantly higher because the original $20 fee, in addition to being based on cost data available in 1991, did not include the costs of the new technology. The proposed Schedule of Fees continues to require that the fee be paid by virtually all NIV applicants, with only very limited exceptions (e.g., for diplomatic visas).

The NIV application processing fee is cost-based and is paid regardless of whether a visa is issued because it covers the cost of processing the visa application. Note that applicants who are issued a visa also may be charged an NIV issuance fee based on reciprocity with the host country (Item 57 in the proposed schedule). These reciprocal NIV issuance fees were not included in the Department's cost-of-service study because they are not cost-based but rather are determined in light of other countries' practices. The Department seeks to ensure that the total amount of U.S. nonimmigrant visa fees, including the NIV application processing fee and any issuance fees based on reciprocity, reflects the total of a foreign country's fees for comparable visas.

Under the current Schedule of Fees, visa processing fees for crewmen, who generally are manifested on a single crew list document, are based on the number of crew members on the document. In fact, each crew member's eligibility for a visa is reviewed as if he or she were applying for a nonimmigrant visa. This review requires the same amount of labor and processing time as a nonimmigrant visa application. To ensure full recovery of those costs, the nonimmigrant visa processing fee of $45 on the proposed Schedule will apply to each individual crew applicant. The separate entry on the Schedule for crewmen is therefore being eliminated.

The proposed Schedule includes new fees for two special visa-related services for aliens that currently are performed for no fee: (1) Legal permanent resident status may expire when an alien remains outside the United States for an extended period of time. Application for returning resident status is made at embassies and consulates overseas. Processing a returning resident application involves the same work as processing an immigrant visa. (2) Legal permanent resident aliens who have lost their alien registration cards may apply at an embassy or consulate for a transportation letter to re-enter the United States—a service that also requires a discernible amount of consular time. The cost of both of these services currently is paid by the American taxpayer. The proposed fees for these special services for aliens will more appropriately allocate the costs of performing them to the users. The proposed fee for the first service is $50 and the fee for the second service is $120.

Deletions

A number of services are being deleted from the Schedule; for example, Administration of Examinations, which is not a consular service, but rather a service to other agencies. It is frequently performed by administrative rather than consular officers. Similarly, Freedom of Information Services, which are performed by another office in the Department, has been deleted.

Amendments to 22 CFR Part 51, Subpart D (22 CFR 51.61 Through 51.67)

The Department is also making technical amendments to 22 CFR Part 51, Subpart D, which addresses passport fees. Although passport fees are listed in the Schedule of Fees published at 22 CFR 22.1, 22 CFR 51.61 also sets forth the current passport fees under the heading ''statutory fees.'' The Department has decided not to include the specific amount of the fees in section 22 CFR 51.61, but instead to cross-reference to the Schedule of Fees. This will permit future adjustments to passport fees to be made more efficiently, since it will be necessary to amend only the Schedule of Fees as it appears in 22 CFR 22.1. The Department is similarly amending 22 CFR 51.67, which at present states the specific amount of the fee for expedited passport services.

In addition, 22 CFR 51.62 provides for the possibility of ''regulatory fees,'' but does not set forth any services for which such fees are charged. The Department believes that the provision for ''statutory'' and ''regulatory'' fees in sections 51.61 and 51.62, respectively, reflects the fact that the precise amount of certain passport fees formerly was specified by statute while other passport-related fees could potentially be established by regulation pursuant to general statutory authorities. Now, however, the statutes that specifically provide for passport fees no longer set the actual amount of the fee to be charged. Instead, all fees are authorized by statutes that leave the precise amount to be set by regulation in accordance with user charges principles. As a result, the Department has concluded that sections 51.61 and 51.62 can now be combined into a single section, which will be section 51.61, setting forth the passport services for which fees will be charged. The remaining sections of Subpart D will be renumbered accordingly.

Finally, amendments are being made in Subpart D to conform that Subpart to other changes made in the Schedule of Fees and to modernize its provisions.

Amendment to 22 CFR Part 53

The title of 22 CFR Part 53 is being changed and the authority citation is being revised.

Regulatory Findings

This rule is not considered to be a major rule for purposes of E.O. 12291

nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This rule has been reviewed as required by E.O. 12988 and determined to be in compliance therewith. This rule is exempt from E.O. 12866 but has been reviewed internally by the Department to ensure consistency with the objectives thereof and by OMB in light of its public policy implications. OMB has determined that the rule would in any event not constitute a significant regulatory action under E.O. 12866.

List of Subjects

22 CFR Part 22

Consular services, Fees, Schedule of fees for consular services, Passports and visas.

22 CFR Part 51

Passports, fees.

22 CFR Part 53

Passport requirement and exceptions.

Accordingly, parts 22, 51, and 53 are proposed to be amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 22 U.S.C. 214, 4201, 4206, 4215, 4219; 31 U.S.C. 9701; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Section 22.1 is revised to read as follows:

22.1 Schedule of fees.

Item No.	Fee
Passport and Citizenship Services	
1. Passport Services. [former nos. 1, 3, 4]: [1]	
(a) Execution	$15.00.
(b) First-time issuance:.	
(1) Applicants age 16 or over	$45.00 plus expedited processing fee if applicable.
(2) Applicants under age 16	$25.00 plus expedited processing fee if applicable.
(c) Subsequent issuance (renewal):.	
(1) Applicants age 16 or over	$40.00 plus expedited processing fee if applicable.
(2) Applicants under age 16	$25.00 plus expedited processing fee if applicable.
(d) Expedited service (exclusive of express mail charges) not applicable overseas:.	
(1) Requested guaranteed 3-day service	$35.00.
(2) In-person service at a U.S. Passport Agency, unless the Department has determined that the applicant is required to apply at a U.S. Passport Agency.	$35.00.
2. Exemptions: The following applicants are exempted from passport fees: [former no. 5]:	
(a) Officers or employees of the United States proceeding abroad or returning to the United States in the discharge of their official duties, or their immediate family members (22 U.S.C. 214).	No fee.
(b) American seamen who require a passport in connection with their duties aboard an American flag vessel (22 U.S.C. 214).	No fee.
(c) Widows, children, parents, or siblings of deceased members of the Armed Forces proceeding abroad to visit the graves of such members (22 U.S.C. 214).	No fee.
(d) Employees of the American National Red Cross proceeding abroad as members of the Armed Forces of the United States (10 U.S.C. 2602(c)).	No fee.
(e) Peace Corps and Volunteer Leaders deemed to be employees of the United States for purposes of exemption from passport fees (22 U.S.C. 2504(a)).	No fee.
3. File search and verification of U.S. citizenship when applicant has not presented evidence of citizenship and previous records must be searched. (This fee will not be charged when the applicants' passport was stolen or when one of the exemptions in item 38 is applicable.) [former no. 10(a)].	$15.00.
4. Determination or adjudication of U.S. citizenship for applicants born overseas who have not presented a U.S. passport, Report of Birth Abroad of a Citizen of the United States, or Certificate of Naturalization or Citizenship from the Immigration and Naturalization Service. [new] [2].	$100.00.
5. Passport amendments, to add current or new information, change a name, extend a previous passport time limitation, correct an administrative error, validate a passport for travel to restricted countries, or add extra pages. [former no. 6].	No fee.
6. Passport waiver (22 CFR 53.2(h), Passport requirement and exceptions). [former no. 12]	No fee.
7. Registration of a U.S. citizen at a U.S. Embassy or Consulate when documentary evidence of U.S. citizenship has been presented. [former no. 7].	No fee.
8. Report of Birth Abroad of a Citizen of the United States (includes new no. 4). [former nos. 8, 9(a)]	$40.00.
9. Issuance of Replacement Report of Birth Abroad of a Citizen of the United States by the Department of State in Washington. [former no. 9].	$40.00.
For fees relating to obtaining documents from passport files and related records, see Documentary Services, item 35 and succeeding.	
(Item nos. 10 through 14 vacant.)	
Overseas Citizens Services	
General Overseas Assistance:	
15. Arrest visits. [new]	No fee.
16. Assistance regarding the welfare and whereabouts of a U.S. citizen, including child custody inquiries. [new].	No fee.
17. Loan processing. [new]:.	

Item No.	Fee
(a) Repatriation loans.	No fee.
(b) Emergency dietary assistance loans.	No fee.
(Item Nos. 18–20 vacant.)	
Death and Estate Services:	
21. Identification of remains and consultation with family members of a U.S. Citizen. [new]	No fee.
22. Assistance to the next-of-kin in making arrangements for shipping or other disposition of remains of a U.S. Citizen. [former no. 73].	No fee.
23. Affidavit attesting to preparation and packing of remains of a U.S. Citizen. [former no. 59]	No fee.
24. Issuance of consular mortuary certificate on behalf of a U.S. Citizen. [former no. 60]	No fee.
25. Assistance in transshipment of remains of a foreign national to or through the United States, including documentation covered by items 23 and 24. [new].	$700.00.
26. Preparation of Report of Death of an American Citizen Abroad, including sending copies to legal representative and closest known relative or relatives. [former no. 9(c)].	No fee.
27. Acting as a provisional conservator of estates of U.S. citizens (other than U.S. Government employees), including taking possession of, making an inventory, placing the official seal on the estate, overseeing the appraisal, sale and final disposition of the estate, disbursing funds, forwarding securities, etc.: [former no. 70, 71, 72]:.	
(a) Estates under $10,000	No fee.
(b) Estates $10,000 or more, for rendering services additional to taking possession, inventorying, and placing the official seal.	Consular time (item 70) and costs.
(Item nos. 28–29 vacant.)	
Services Relating to Vessels and Seamen:	
30. Shipping and seamen services, including recording of bill of sale of vessel purchased abroad, taking of application for certificate of American ownership, and investigation. [former no. 34].	Per service, $80.00.
31. Documentary services related to shipping, including issuance of certificate of American ownership. [former no. 35].	Per service, $650.00 plus costs incurred.
32. Services provided for an American vessel or American seamen. 22 U.S.C. 4206. [former no. 36]	No fee.
(Items nos. 33–34 vacant.)	
Documentary Services	
35. Notarials. [former nos. 45 (a) and (b)]	$55.00.
36. Certifications:	
(a) Certifying under official seal that a copy or extract made from an official or a private document is a true copy. [former nos. 45(c), 10(c)].	$20.00; each additional copy $10.00.
(b) Certifying under official seal a statement or extract from official files or a statement that no record of an official file can be located. [former no. 10(d)].	$20.00; each additional copy $10.00.
(c) Certifying the fact of issuance of a Report of Birth Abroad of a Citizen of the United States and certifying copies of documents relating to births, marriages, and deaths of citizens abroad issued by a U.S. Embassy or Consulate (obtainable from the Department of State, Washington, D.C.). [former no. 9].	$20.00; each additional copy $10.00.
37. Authentications:	
(a) Certifying to official character of a foreign notary or other official (i.e., authenticating a document). [former no. 45(d), 9(b)].	$32.00.
(b) Authenticating a federal, state, or territorial seal, or certifying to the official status of an officer of the United States Department of State or of a foreign diplomatic or consular officer accredited to or recognized by the United States Government, or any document submitted to the Department for that purpose. [former no. 45(f)].	$32.00.
38. Exemptions: Notarial, certification, and authentication fees (items 35, 36, and 37) or passport file search fees (item 3) will not be charged when the service is performed: [former nos. 11, 58]:	
(a) At the request of any federal government agency (unless substantial costs would be incurred)	No fee.
(b) At the request of any state or local government, the District of Columbia, or any of the territories or possessions of the United States (unless substantial costs would be incurred).	No fee.
(c) With respect to documents to be presented by claimants, beneficiaries, or their witnesses in connection with obtaining federal, state, or municipal benefits.	No fee.
(d) For American citizens outside the United States preparing ballots for any public election in the United States or any of its territories.	No fee.
(e) At the request of a foreign government or an international agency of which the United States is a member if the documents are for official noncommercial use.	No fee.
(f) At the request of a foreign government official when appropriate or as a reciprocal courtesy	No fee.
(g) At the request of U.S. Government personnel, Peace Corps volunteers, or their dependents stationed or traveling officially in a foreign country.	No fee.
(h) With respect to documents whose production is ordered by a court of competent jurisdiction	No fee.
39. Executing commissions to take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of federal court on behalf of an indigent party. [former no. 66].	No fee.
40. Providing seal and certificate for return of letters rogatory executed by foreign officials. [former no. 67]	$455.00.
41. Taking depositions or executing commissions to take testimony. [former no. 69]	Per hour, $200.00 plus costs incurred.
(Items nos. 42–49 vacant.)	
Visa Services	
50. Immigrant visa application processing fee. [former no. 20]	$260.00.

Item No.	Fee
51. Immigrant visa application surcharge for Diversity Visa Lottery. [former no. 19]	$75.00.
52. Immigrant visa issuance fee. [former no. 21]	$65.00.
53. Refugee case preparation and processing. [new]	No fee.
54. Nonimmigrant visa application processing fee. [former no. 26]	$45.00.
55. EXEMPTIONS from nonimmigrant visa application processing fee: [former no. 26]:	
(a) Applicants for A, G, C–2, C–3, and NATO visas	No fee.
(b) Applicants for J visas participating in official U.S. Government (USIA or USAID) sponsored educational and cultural exchanges.	No fee.
(c) Persons issued replacement machine readable visas when the original machine readable visa has not adhered to the passport or other travel document through no fault of the applicant.	No fee.
(d) Persons exempted by international agreement as determined by the Department	No fee.
(e) Persons travelling to participate in charitable activities as determined by the Department	No fee.
56. Visa fingerprinting. [former no. 28]	$25.00.
57. Nonimmigrant visa issuance fee, including border crossing cards. [former nos. 22, 24]	RECIPROCAL.
58. EXEMPTIONS from nonimmigrant visa issuance fee: [former no. 23]:	
(a) An official representative of a foreign government or an international or regional organization of which the U.S. is a member.	No fee.
(b) An applicant transiting to and from the United Nations headquarters	No fee.
(c) An applicant participating in a U.S. government sponsored program	No fee.
59. Special visa processing services for aliens: [new]:	
(a) returning resident status	$50.00.
(b) transportation letter	$120.00.
(c) waiver of immigrant visa ineligibility (collected for INS; subject to change)	$95.00.
60. Filing immigrant visa petition (collected for INS; subject to change)	$80.00.
(Items Nos. 61–64 vacant.)	
Administrative Services	
65. Nonemergency telephone calls. [former no. 85]	Local long distance rate plus $10.00.
66. Setting up and maintaining a trust account for 1 year or less to transfer funds to or for the benefit of an American in need in a foreign country. [former no. 92].	$20.00.
67. Transportation charges incurred in the performance of fee and no-fee services when appropriate and necessary. [former no. 94].	Costs incurred.
68. Emergency passport photo service. [former no. 13]	No fee.
69. Return check processing fee. [former no. 95]	$25.00.
70. Consular time charges as required by this schedule or for fee services performed away from the office or after-duty-hours. [former no. 93].	Per hour, $180.00 plus costs incurred.
71. Photocopies (provided other than pursuant to 22 CFR Part 171 or order of a court of competent jurisdiction). [former nos. 10(b), 76].	Per page, $1.00.
(Item nos. 72–80 vacant.)	

[1] Note: Former numbers will not appear in the Final rule.
[2] ''New'' designations will not appear in the Final rule.

§ 22.8 [Removed]

3. Section 22.8 is removed.

PART 51—[AMENDED]

4. The authority citation for part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a, 212, 213, 214, 214a, 216, 217a, 2671(d); 31 U.S.C. 9701; Sec. 129, Pub. L. 102–138, 105 Stat. 661; E.O. 11295, 36 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

5. Section 51.61 is revised to read as follows:

§ 51.61 Passport fees.

Fees, including execution fees, shall be collected for the following passport services in the amounts prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1):

(a) A fee for each passport issued, which fee shall vary depending on whether the passport is issued to a first-time applicant or a renewal applicant and on the age of the applicant. The passport issuance fee shall be paid by all applicants at the time of application, except as provided in § 51.62(a).

(b) A fee for execution of the passport application, except as provided in section 51.62 (b), when the applicant is required to execute the application in person before a person authorized to administer oaths for passport purposes. This fee shall be collected as part of the passport issuance fee at the time of application and is not refundable (see 22 CFR 51.65). When execution services are provided by an official of a state or local government or of the United States Postal Service, the fee may be retained by that entity to cover the costs of service, pursuant to an appropriate agreement with the Department of State.

(c) A fee for expedited services, if any, provided pursuant to 22 CFR 51.66.

6. Section 51.62 is removed and sections §§ 51.63 through 51.66 are redesignated as §§ 51.62 through 51.65, respectively.

7. Newly redesignated § 51.63 is amended in paragraph (a) by changing ''§ 51.63'' to read ''§ 51.62'', and in paragraph (f) by changing ''§ 51.67'' to read ''§ 51.66''.

8. Newly redesignated § 51.66 is amended by revising paragraphs (a) and (c) to read as follows:

§ 51.66 Expedited passport processing.

(a) Within the United States, an applicant for a passport service (including issuance, amendment, extension, or the addition of visa pages) may request expedited processing by a Passport Agency. All requests by applicants for in-person services at a Passport Agency shall be considered requests for expedited processing, unless the Department has determined that the applicant is required to apply at a U.S. Passport Agency.

* * * * *

(c) A fee shall be collected for expedited processing service in the

amount prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1). This amount will be in addition to any other applicable fee and does not include urgent mailing costs, if any.

PART 53—PASSPORT REQUIREMENT AND EXCEPTIONS

9. The title of Part 53 is revised to read as set forth above.

10. The authority citation for part 53 is revised to read as follows:

Authority: 8 U.S.C. 1185; Proc. 3004, 18 FR 489, 3 CFR, 1949–1953 Comp., p. 180.

Dated: November 19, 1997.

Patrick F. Kennedy,

Acting Under Secretary for Management.

[FR Doc. 97–30838 Filed 11–28–97; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 901

RIN 0701–AA58

Appointment to the United States Air Force Academy

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force proposes to revise its regulation on processing nominations and appointments to the United States Air Force Academy (USAFA). The proposed revision changes admission age limit from 22 to 23, service obligation from 6 to 5 years, USAFA/OL–C to USAFA/RRA, changes high school AFJROTC unit into high school Honor AFJROTC unit and adds Northern Mariana Islands as a nominating source.

DATES: Comments must be received no later than January 30, 1998.

ADDRESSES: Comments should be submitted to HQ USAFA/RRA, 1040 Air Force Pentagon, Washington, DC 20330–1040.

FOR FURTHER INFORMATION CONTACT: Ms. Judith McCann, (703) 697–7116.

SUPPLEMENTARY INFORMATION: The Department of the Air Force proposes to revise 32 CFR Part 901 to reflect current policies. Part 901 is the Air Force guidance on processing nominations and appointments to the United States Air Force Academy (USAFA). This process directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by Title 10, U.S.C., Chapter 903 and Title 10, U.S.C., Chapter 8013. It implements DoD Directive 1322.22, August 24, 1994. This proposed rule, Air Force Instruction (AFI) 36–2019, revises and replaces AFI 36–2019, Appointment to the United States Air Force Academy, May 16, 1994, and Air Force Regulation 53–10, Appointment to the United States Air Force Academy, October 22, 1985.

List of Subjects in 32 CFR 901

Military academies.

For the reason stated in the preamble, the United States Air Force proposes to revise, 32 CFR part 901 as follows:

PART 901—APPOINTMENT TO THE UNITED STATES AIR FORCE ACADEMY

Sec.

901.0 Purpose.
901.1 Responsibilities.
901.2 Nominations and appointments.
901.3 Obligation of appointees.
901.4 Forms Prescribed.
Attachment 1 to Part 901—Eligibility Requirements for U.S. Air Force Academy Applicants
Attachment 2 to Part 901—Academy Nomination Categories
Attachment 3 to Part 901—Nomination Methods
Attachment 4 to Part 901—Appointment Vacancy Selection
Attachment 5 to Part 901—Appointee Obligations

Authority: 10 U.S.C., Chapter 903, and 10 U.S.C., 8013, except as otherwise noted.

§ 901.0 Purpose.

It provides instructions to Air Force members to process nominations and appointments to the United States Air Force Academy (USAFA). This instruction directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by Title 10, United States Code, Chapter 903 and Title 10, United States Code, Section 8013. System of Records F036 AFDPB, Air Force appointment, Separation records applies.

§ 901.1 Responsibilities.

The USAFA offers cadet appointments to candidates with the strongest potential to become successful career officers. USAFA offers appointments according to law and HQ USAF guidance. The President may appoint candidates to become cadets; however, appointments are conditional until the candidates enter the Academy.

(a) HQ USAFA/RRS evaluates applications as an initial step in the appointment process and as an aid to Members of Congress in screening their applicants for nomination.

(b) As part of the appointment process HQ USAFA/RRS will:

(1) Send each applicant a packet, with a request for the academic, athletic, leadership, and background information.

(2) Evaluate the application information and provide an analysis to appropriate congressional offices. This report indicates the applicant's potential to qualify for admission and assists Members of the Congress in selecting the best-qualified applicants for nomination.

(3) Advise qualified applicants to seek a nomination. Inform and encourage individuals whose evaluations reflect areas needing improvement to submit additional test scores or information in an effort to improve their qualifications.

(4) Schedule qualified applicants for a medical examination through the Department of Defense Medical Examination Review Board (DoDMERB) for military service eligibility. DoDMERB will notify the student directly of his or her medical status.

§ 901.2 Nominations and appointments.

(a) Eligibility and Nomination Categories. Statutory authority for nominations and appointments is Title 10, U.S.C., Chapter 903.

(1) Eligibility requirements for potential candidates are at attachment 1 to this part.

(2) Specific authorities may nominate eligible applicants for appointment vacancies.

(3) Each applicant must obtain a nomination in order to receive an appointment. Applicants may apply for a nomination in each category in which they are eligible. Nomination categories are at attachment 2 to this part.

(b) Notice of Nomination. The Associate Director of Admissions (HQ USAFA/RRS) acknowledges receipt of all nominations (see attachment 3 to this part).

(1) If a nominee is not in the Academy system, HQ USAFA/RRS will forward an application to the nominee.

(2) HQ USAFA/RRS will send a candidate kit to all applicants or nominees with qualifying potential for either the Academy or the USAFA Preparatory School.

(c) Appointment Selection.

(1) HQ USAFA/RRS will notify HQ USAFA/RRA, of all candidates selected for appointment (see attachment 4 to this part).

(2) To bring the Cadet Wing up to full strength, HQ USAFA/RRS may offer additional appointments from the qualified alternate pool.

(i) The first 150 appointments must come from individuals having nominations from Members of Congress.

(ii) Thereafter, three of every four additional appointments must come

from individuals having nominations from the Vice President, Members of the Congress, and U.S. possessions categories.

(3) If any of the annual quotas of cadets authorized in the Regular Airman, Reserve Airman, or Presidential nomination categories are not filled, HQ USAFA/RRS may offer appointments to candidates from the other two categories to fill the vacancies on a best-qualified basis.

(4) HQ USAFA/RRA, notifies Members of Congress and the Vice President of all offers of appointment from their nominees. After HQ USAFA/RRA notifies the congressional and Vice Presidential nomination sources and advises HQ USAFA/RRS of this notification, HQ USAFA/RRS will notify each appointee by letter, enclosing a USAFA Form 0–28, Acceptance Declination Certificate.

(5) On receipt of an acceptance statement for each unconditional offer of appointment, HQ USAFA/RRS forwards pertinent information from the completed candidate file to Cadet Examinations and Records (HQ USAFA/DFRR).

(6) HQ USAFA/RRS will hold accepted conditional offers of appointment until the conditional factor is resolved.

(i) HQ USAFA/RRS will then notify HQ USAFA/RRA of conditional status removal (from the offer of appointment) for notification of the nominating sources.

(ii) If the conditional status of appointment is not removed, HQ USAFA/RRS will notify HQ USAFA/RRA, who will in turn notify the applicable nominating sources of the withdrawal of the appointment.

(7) HQ USAFA/RRS completes appointment processing by:

(i) Forwarding an appointment kit which includes detailed reporting instructions to each appointee.

(ii) Arranging for the appointees' travel or by issuing invitation to travel orders.

(iii) Notifying the Directorate of Cadet Personnel (HQ USAFA/DPYC) of Regular airmen appointees.

Note: Regular airmen in technical school should complete all phases of training, if time permits, before reporting to the Academy. USAFA/DPYC will coordinate with HQ AFMPC/MPCRAC1 to set the reporting date.

(d) Nonselection for an Appointment.

(1) HQ USAFA/RRS will notify in writing each candidate who qualified as an applicant but was later disqualified (due to receipt of unfavorable or unvalidated information).

(2) HQ USAFA/RRS will notify in writing each candidate who is not offered an appointment by May 1.

Note: For active duty Air Force applicants, HQ USAFA/RRS will also notify the applicable Military Personnel Flight (MPF) of the member's appointment status.

§ 901.3 Obligation of appointees.

An appointee who enters the Air Force Academy from civilian status and takes the oath of allegiance as a cadet normally assumes a military service obligation of not less than 5 years nor more than 8 years under 10 U.S.C. 651.

(a) As a condition to appointment, cadets will fulfill the following obligations:

(1) Complete the Academy course of instruction unless disenrolled from the Academy by competent authority.

(2) Accept an appointment and upon graduation serve as a commissioned officer in a Reserve (after September 30, 1996) component of one of the armed services for a minimum of 5 years.

(3) Serve as a commissioned officer in the Reserve component until the 8th anniversary (if authorized to resign from the Regular component before the 8th anniversary of their graduation).

(4) Be subject to the separation policies in Air Force Instruction 36–2020, Disenrollment of U.S. Air Force Academy Cadets.

(b) HQ USAFA/DPYQ will ensure minor cadets sign an agreement with the parent's or guardian's consent to fulfill the above obligations.

(c) Cadet's Oath of Allegiance. On admission, each appointee (except foreign cadets) is required to take the Oath of Allegiance as written at attachment 5 to this part.

(1) If an appointee refuses to take and subscribe to the oath, the appointment is terminated.

(2) Cadets who enter the Air Force Academy from the regular or reserve component of the Air Force or as an enlisted member of the armed forces may not terminate any period of remaining obligated service because of the acceptance of that appointment. If such cadets fail to complete the Academy course of instruction, or are separated from service as cadets for any reason other than appointment as a commissioned officer or because of a physical disability, they will revert to enlisted status to serve any prior service obligation under 10 U.S.C. 516. However, all service as a cadet is counted toward fulfillment of the remaining period of obligated service.

§ 901.4 Forms prescribed.

(a) AF Form 1786, Application for Appointment to the USAF Academy Under Quota Allotted to Enlisted Members of the Regular and Reserve Components of the Air Force.

(b) DD Form 1870, Nomination for Appointment to the United States Military Academy, Naval Academy, Air Force Academy.

(c) USAFA Form 0–28, Acceptance Declination Certificate.

Attachment 1 to Part 901—Eligibility Requirements for U.S. Air Force Academy Applicants

Note: This attachment provides the eligibility requirements for all applicants desiring to attend the USAFA.

A1.1. Each applicant must meet the following eligibility requirements:

A1.1.1. Age. Must be at least 17 and not have passed their 23rd birthday on July 1 of the year of entry into the Academy.

A1.1.2. Citizenship. Must be a citizen or national of the United States (except for students sponsored by foreign governments under 10 U.S.C. 9344). HQ USAFA/RRS will verify citizenship of all incoming cadets prior to administration of the oath of appointment, (i.e., birth or nationalization certificate). Facsimiles, copies, photographs or otherwise of birth certificate or certificate of citizenship must include proper certification as evidenced by the raised seal of the issuing authority.

A1.1.3. Domicile. Be domiciled within the boundaries of the constituency if nominated by an authority designated in the Congressional and U.S. Possessions categories.

A1.1.4. Personal Standards. Must exhibit the highest standards of moral character, personal conduct, and integrity. Applicants must explain or clarify any of the following circumstances:

A1.1.4.1. Applicant is or has been a conscientious objector.

A1.1.4.2. Any facts that indicate the applicant's appointment may be inconsistent with national security interests.

A1.1.4.3. Conviction by court-martial of other than a ''minor offense'' (MCM, 1984, Part V, paragraph 1e, page V–1) or conviction of a felony in a civilian court.

A1.1.4.4. Elimination from any officer training program or any preparatory school of the Army, Navy, or Air Force Academies for military inaptitude, indifference, or undesirable traits of character. This includes any person who resigned in lieu of impending charges or who was eliminated by official action.

A1.1.4.5. Habitual alcohol misuse or drug abuse which exceeds Air Force standards is disqualifying.

A1.1.4.6. Behavior, activity, or association showing the applicant's conduct is incompatible with exemplary standards of personal conduct, moral character, and integrity.

A1.1.5. Marital Status. Be unmarried and have no legal obligation to support a child, children, or any other person.

A1.1.6. Medical Examination. Must be medically qualified as determined by DoDMERB. The Air Force Academy Command Surgeon may grant waivers.

A1.1.7. Academic Examinations. Each applicant must achieve satisfactory results on the Scholastic Aptitude Test or the American College Testing (ACT) Test.

A1.1.8. Candidate Fitness Test (CFT).

Note: HQ USAFA/AH may grant waivers if the candidate clearly demonstrates an acceptable level of physical fitness.

Attachment 2 to Part 901—Academy Nomination Categories

Note: This attachment identifies the nomination categories available to individuals seeking an appointment to the USAFA.

A2.1. Congressional and US Possessions Categories. The nominating authorities listed below are authorized the following cumulative quotas:

Note: Nominating authorities will send DD Form 1870 to HQ USAFA/RRA, 1040 Air Force Pentagon, Washington, DC 20330–1040 for processing.

(Approved by the Office of Management and Budget under control number 0701–0026)

Nominating Authority	Authorized Quota
U.S. Senators	5
U.S. Representatives	5
District of Columbia	5
U.S. Delegate Guam	2
U.S. Delegate Virgin Islands	2
U.S. Delegate American Samoa (Applicants domiciled in American Samoa)	1
Governor of Puerto Rico (native)	1
Resident Commissioner of Puerto Rico (domiciled and native)	5
Resident Representative Northern Mariana Island	1
Vice-Presidential	5

(Nominates from nation at large with deadline to apply October 31)

A2.2. Military Related Nomination Categories:

A2.2.1. Presidential Competitive Category. This nomination category authorizes 100 appointments each year and is made by applicant order of merit. Individuals apply to HQ USAFA/RRS between May 1 and January 31. Applicants do not write directly to the President of the United States.

Note: For the purpose of this instruction, children are defined as natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday. To be eligible in this category, the applicant's parent must be or have been a Regular or Reserve member of the Armed Forces with the following restrictions:

A2.2.1.1. On active duty (other than for training) and served continuously on active duty for 8 years by July 1 of the year that the candidate would enter.

A2.2.1.2. Retired with pay or granted retired or retainer pay (children of reservists retired and receiving pay pursuant to of Title 10, United States Code, Chapter 67, are ineligible).

A2.2.1.3. Parent died after retiring with pay or died after being granted retired or retainer pay (children of such reservists who were retired and receiving pay pursuant to of Title 10, United States Code, Chapter 67, are ineligible).

A2.2.1.4. In accordance with 10 U.S.C. 9342, a person eligible for appointment consideration under the Children of Deceased or Disabled Veterans (CODDV) category is not eligible as a candidate in the Presidential category.

A.2.2.2. Children of Deceased or Disabled Veterans and Children of Military or Civilian Personnel in a Missing Status Category (CODDV). This category authorizes 65 cadets at USAFA at any one time. Individuals apply to HQ USAFA/RRS between May 1 and January 31. USAFA will offer appointments by order-of-merit. Eligibility requirements are delineated in 10 U.S.C., Chapter 9342(a)(1), and the Department of Veteran Affairs is the final determining agency for this category. Disabilities under this category must be a full 100 percent determination.

A.2.2.3. Honor Military and Honor Naval Schools, Air Force Reserve Officers' Training Corps (AFROTC), and Air Force Junior Reserve Officers' Training Corps (AFJROTC) Competitive Category. This category authorizes 20 appointments. USAFA will offer appointments by order-of-merit.

A.2.2.3.1. Honor Military and Honor Naval Schools may nominate five honor graduates, or prospective honor graduates, from each designated honor military and honor naval school. School authorities certify that each nominee is a prospective honor graduate or an honor graduate, and meets the basic eligibility requirements. School authorities submit nominations directly to the USAFA/RRS using specific nomination forms no later than January 31 of the entry year. Nominations are not limited to honor graduates of the current year. Eligible candidates apply to the administrative authority of the school involved.

A.2.2.3.2. AFROTC may nominate five students from each college or university AFROTC detachment to compete for appointment. Students must apply for nomination to the Professor of Aerospace Studies (PAS) who must certify that the applicants meet the basic eligibility requirements and have or will have satisfactorily completed at least 1 year of scholastic work at the time of admission. The president of the institution will nominate directly to HQ USAFA/RRS by January 31.

A2.2.3.3. Five students from each high school Honor AFJROTC detachment to compete for appointment. Students will apply for nomination to the Aerospace Science Instructor, who must certify that the applicants meet the basic eligibility requirements and have or will have successfully completed the prescribed AFJROTC program by the end of the school year. The principal of the high school may nominate five individuals directly to USAFA by January 31.

A2.2.4. Children of Medal of Honor Recipients Category. The child of any Medal of Honor recipient who served in any branch of the Armed Forces may apply for nomination directly to HQ USAFA/RRS between May 1 and January 31. If applicants meet the eligibility criteria and qualify for admission, they are admitted to the Academy. Appointments from this category are unlimited.

Note: For the purpose of this category, children are defined as natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday.

A2.2.5. Regular Airmen Category. This category is authorized 85 appointments each year and filled from candidates in order of merit. Any enlisted member of the Regular component of the Air Force may apply for nomination by January 31.

A2.2.5.1. Selectees must be in active duty enlisted status when appointed as cadets and must complete AF Form 1786, Application for Appointment to the USAF Academy Under Quota Allotted to Enlisted Members of the Regular and Reserve Components of the Air Force, and submit it to their organization commander who determines if the applicant meets the basic eligibility requirements. If a candidate is not qualified, the organization commander will return the application to the applicant and explain why the applicant was disqualified.

A2.2.5.2. The organization commander will: advise the local Military Personnel Flight (MPF) to hold any reassignment action pending selection of an appointment. The MPF places the airman in assignment availability code (AAC) 05 and coordinates on AF Form 1786. Upon Academy notification, MPF will reassign applicants not selected. The initial application package from the technical training center MPF to HQ USAFA/RRS includes the following information on all pipe-line students: name, Social Security Number, Air Force specialty code, course graduation date, follow-on training, and end assignment.

A2.2.5.3. Complete an endorsement and forward AF Form 1786 through the MPF to HQ USAFA/RRS. The commander's endorsement must include a comprehensive statement of the applicant's character, ability, and motivation to become a career officer. The commander will use official records to verify statements in the application regarding component, length of service, and date of birth.

A2.2.6. Reserve Airmen Category. This category is authorized 85 appointments each year and filled from candidates in order of merit. The deadline for applications is January 31 of the entry year. Any enlisted member of the Air Force Reserve or Air National Guard of the United States (ANGUS) may apply for nomination by January 31 of the entry year. A reserve commissioned officer who satisfactorily completes 1 year of service in an active Reserve assignment by July 1 of the year in which admission is sought may apply in this category. (Reserve commissioned officers on extended active duty (EAD) may apply for vacancies in the Regular competitive category.) If selected, such candidates must have commissioned officer status terminated and be in the enlisted Air Force Reserve before appointment as Air Force Academy cadets. Cadets in this category who are separated from the Air Force Academy without

prejudice and under honorable conditions may apply for reappointment as Reserve commissioned officers. Reserve Airmen on EAD as a result of an honor suspension from the Air Force Academy Cadet Wing must reapply for admission under this category.

A2.2.6.1. Reserve category applicants must complete AF Form 1786 and submit it to their organization commander. The organization commander processes the application.

A2.2.6.2. A Reserve applicant is not placed on active duty for the purpose of processing him or her for a nomination or appointment to the Air Force Academy.

A2.3. Superintendent Competitive Category. The Superintendent may nominate up to fifty eligible applicants who have not secured a nomination to USAFA from any other nominating authority. USAFA will select highly qualified applicants in order-of-merit from the nationwide applicant pool of qualified alternates to fill the class.

A2.4. Foreign Students Competitive Category. 10 U.S.C. 9344 authorizes USAFA to provide instruction for as many as 40 foreign students at any one time. Foreign citizens must apply to their government. USAFA coordinates with US Embassies to ensure compliance with all admission and appointment requirements. HQ USAFA/RRA coordinates with HQ USAF, Department of Defense and State Department before forwarding nomination invitations to each country. The application must describe the applicant's background and must be received by USAFA by December 31 before their desired summer admission. Applicants in these categories must meet the eligibility and admissions requirements established for all Academy candidates except for US citizenship. They must be able to read, write, and speak English proficiently in a college environment.

Attachment 3 to Part 901—Nomination Methods

Note: This attachment provides information on the different methods to nominate candidates for appointment to the Academy.

A3.1. Nomination methods to fill quota vacancies in the Vice-Presidential, congressional, and U.S. Possessions Categories follow:

A3.1.1. The Principal Numbered-Alternate Method. The nominating authority indicates his or her personal preference by designating a principal nominee and numbering up to nine alternate nominees in order of preference. HQ USAFA/RRS must offer the appointment to the first fully qualified nominee. The order of preference must be honored; however, HQ USAFA/RRS may offer appointments in any sequence.

A3.1.2. The Principal Competitive-Alternate Method. The nominating authority designates his or her principal nominee and up to nine other nominees. HQ USAFA/RRS evaluates and ranks nominees by order-of-merit. If the principal nominee is fully qualified, HQ USAFA/RRS will offer this individual the appointment; otherwise, HQ USAFA/RRS will offer the appointment to the fully qualified alternate nominee ranked the highest.

A3.1.3. The Competitive Method. At the request of the nominating authority, the HQ USAFA/RRS evaluates the records of all the nominees, ranks them in order of merit, and offers the appointment to the highest ranked nominee.

Attachment 4 to Part 901—Appointment Vacancy Selection

Note: This attachment provides instructions for charging appointments to the appropriate nominating source.

A4.1. HQ USAFA/RRS charges appointees on behalf of the Secretary of the Air Force. HQ USAFA/RRA will audit all charges. Selection of the charged cadets from the nominees for each vacancy is accomplished as follows:

A4.1.1. Principal Nominee, Numbered-Alternate Method. If the Principal Nominee has accepted appointment, he or she is charged against their nominating source vacancy. Otherwise the highest ranked alternate accepting an appointment is charged. In instances where a candidate received principal nominations from two different congressional sources, the principal is normally charged to the Member of Congress who submitted the nomination first.

A4.1.2. Principal Nominee, Competitive-Alternate Method. If the Principal nominee has accepted appointment, he or she is charged against the nominating source vacancy. HQ USAFA/RRS evaluates alternates and ranks according to merit. If the Principal does not meet admission criteria, the highest ranking alternate accepting an appointment is charged.

A4.1.3. Competitive Nominee Method. HQ USAFA/RRS evaluates the group of competitive nominees, ranks according to merit, and charges the highest-ranked nominee accepting an appointment.

A4.1.4. Multiple Congressional Nominations. For candidates receiving numerous nominations, HQ USAFA/RRS normally charges the candidate to the congressional source. When a candidate is nominated by several congressional sources, HQ USAFA/RRS charges the candidate to the slate of the congressional member where the candidate ranks the highest, unless the candidate is the principal nominee or a numbered alternate.

A4.1.5. Other Sources of Nomination. HQ USAFA/RRS charges all other candidates not nominated by congressional, Vice-Presidential, or U.S. Possessions to that nominating source (Presidential, AFJROTC, AFROTC, CODDV, Medal of Honor, etc.).

A4.1.6. Qualified Alternates. To bring the Cadet Wing up to strength, the qualified alternates appointed according to § 901.2 (c)(2) are charged to the Secretary of the Air Force. Those candidates having congressional, Vice-Presidential, or U.S. Possessions nominations appear as a qualified alternate for that nominating source.

A4.1.7. Multiple Congressional and Other Sources of Nomination. For appointees who have multiple nominations, HQ USAFA/RRS determines the appointment category to which they are charged. Normally a cadet with both congressional and noncongressional nominations is charged to a congressional authority. HQ USAFA/RRS notifies HQ USAFA/RRA, of these assignments. HQ USAFA/RRA audits and verifies the charges, then notifies the Vice-President, nominating authorities in the Congress, and US Possessions of their charged appointees and other nominees who win appointments.

Attachment 5 to Part 901—Appointee Obligations

Note: This attachment provides the Oath of Allegiance which each Academy appointee must take as an obligation of service.

''I (name), having been appointed an Air Force cadet in the United States Air Force, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of which I am about to enter. So Help Me God.''

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–31347 Filed 11–28–97; 8:45 am]

BILLING CODE 3901–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 14

RIN 1024–AC01

General Provisions and Rights-of-Way

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises existing regulations relating to the issuance of right-of-way permits across National Park Service (NPS) lands. The NPS has been using interim regulations since 1980. Those interim regulations have become dated and are in need of revision. This rulemaking is a complete revision of the interim regulations. It will provide a process for the review, consideration and approval, or denial, of requests for rights-of-way across all areas of the National Park System.

DATES: Written comments will be accepted through January 30, 1998.

ADDRESSES: Mail comments to the National Park Service, Ranger Activities Division, MS 650 (ROW), P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Dick S. Young, Colonial National Historical Park, P.O. Box 210, Yorktown, VA 23690. Telephone (804) 898–7846.

SUPPLEMENTARY INFORMATION:

Background

The NPS is proposing to revise the existing regulations relating to the issuance of right-of-way permits across NPS lands found at 36 CFR 14. The NPS is currently using interim rules that were published in the **Federal Register** on July 11, 1980 (45 FR 47092) to allow telecommunication and other utility rights-of-way across NPS lands. Prior to that date, rights-of-ways across public lands, including areas of the National Park System, were administered under regulations promulgated by the Bureau of Land Management (BLM), found at 43 CFR part 2800. The passage, in 1976, of the Federal Land Policy and Management Act (43 U.S.C. 1761 *et seq.*, 90 Stat. 2743) required the revision of those regulations by the BLM. Regulations promulgated by the BLM in 1980 (45 FR 44518) deleted all references to the NPS.

In response, the NPS adopted, without substantive revision, those provisions found at 43 CFR part 2800 that applied to areas under the management and control of the NPS. These were promulgated as interim regulations on July 11, 1980 (45 FR 47092). This proposed regulation is the first revision of those interim regulations.

The period between 1980 and 1996 has seen many legislative and policy changes regarding right-of-way management. New language in the annual budget legislation, now codified at 16 U.S.C. 3a, has altered the way the NPS looks at fees and the recovery of costs. The intervening years have also allowed the NPS to accumulate experience with rights-of-way and other permitting instruments. While the interim regulations were satisfactory for parts of the process, there are many gaps and several deficiencies and inequities, all demanding the promulgation of new regulations. The regulations contained in this proposed rulemaking will correct the inefficiencies and provide necessary changes.

Key Issues

The NPS is proposing to update and revise right-of-way regulations that will provide a uniform process for the review, consideration and approval or denial of requests for rights-of-way across all areas of the National Park System. These regulations will establish procedures for the permitting of rights-of-way that are authorized at the discretion of the Secretary of the Interior and for rights-of-way authorized by individual park legislation. The regulations do not apply to those uses that are subject to or arise from property rights, such as easements.

These proposed regulations ensure compliance with the right-of-way authorities found in 16 U.S.C. 5, 79 and 23 U.S.C. 317. They reflect the Congressional mandate that activities inconsistent with national park values and purposes will not be authorized in areas of the National Park System, ''except as may have been or shall be directly and specifically provided by Congress.'' See section 101(b) of the Act of March 27, 1978 (16 U.S.C. 1a–1, 92 Stat. 166). They also ensure compliance with applicable provisions of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) and the National Environmental Policy Act of 1969 (43 U.S.C. 4321–4370).

These proposed regulations do not grant an interest greater than a permit revocable at the discretion of the Authorized Officer. The interim regulations state that the regulations do not give the holder any estate of any kind in fee in the lands of the United States. However, confusion over the nature of the privilege permitted by the regulations has arisen by the use of regulatory language normally associated with the transfer of property rights, terms such as ''grant'', ''easement'' and ''license.'' These proposed regulations clarify that the permit issued by the NPS will not be construed as a grant of permanent interest in the real property of the United States.

In granting the discretionary uses the NPS, as an agency of the Federal government, must also follow the directive of Congress to recover all costs associated with providing benefits or services not accruing to the public at large (31 U.S.C. 9701). Accordingly, the fees authorized by the regulations have been adjusted to be comparable with prevailing industry standards and to better reflect the actual costs incurred by the NPS in issuing permits.

Rights-of-way for highways are part of the Federal Aid Highway System. Section 107(d) of Title 23 provides for transfer of lands or interest in lands to appropriate jurisdictions. Requests for such transfer of interest are subject to the provisions of 23 U.S.C. 317. The NPS and the Federal Highway Administration (FHA) have determined that such transfer should be accomplished through a highway easement deed. Highway easement deeds provide for reversion to the NPS of lands or interest in lands when such use is no longer required for highway purposes.

Section-by-Section Analysis

As currently codified in Title 36, part 14 consists of six subparts, labeled A–F. These proposed regulations revise and reorganize these subparts. A detailed discussion of these proposed revisions is presented below.

Subpart A—Right-of-Way Permits—General

Section 14.1 Purpose

This is a new section to clarify the purpose of the regulations of this part. It emphasizes that an applicant for a right-of-way permit must demonstrate that there is no feasible and prudent alternative to the proposed right-of-way. Also, the NPS will only permit those uses that will not be in derogation of the values and purposes for which the various areas have been established, except as may have been or will be directly and specifically provided by Congress.

Section 14.2 Applicability and Scope

This section replaces existing § 14.1, and addresses the following main topics as follows:

1. Park lands and waters subject to regulations. Proposed paragraph (a) will require a permit for rights-of-way over Federally owned lands and waters within the exterior boundaries of park areas. The authority to permit rights-of-way on lands and waters within the boundaries of a unit is provided for in the general legislation governing the management and preservation of the National Park System. (*See* 16 U.S.C. 1–3)

2. Regulations do not apply to NPS owned or operated rights-of-way. Proposed paragraph (b) clarifies that the regulations of this part do not apply to rights-of-way owned, controlled or operated by the NPS.

3. Requirements for no alternatives, derogation and statutory standards. Proposed paragraph (c) clarifies this part as applying only to those permits where there is no prudent or feasible alternate route outside the park, that the use will not be in derogation of park resources and values, and all applicable statutory standards are met.

4. Regulations of oil and gas pipelines. Proposed paragraph (d) clarifies that operations in connection with the exploration, development, production and transportation of non-Federal oil and gas within park units must continue to comply with regulations at 36 CFR part 9, Subpart B. Such activities, including transportation, do not invoke the 36 CFR part 14 regulations. This is due to the fact that owners of the non-Federal

oil and gas possess a vested property right interest that can only be extinguished through acquisition. Paragraph (d) also clarifies that the construction, operation and maintenance of new and existing petroleum product pipelines in park units that originate and terminate outside such units will comply with the requirements of 36 CFR part 9, Subpart B. If authorized by a park unit's enabling statute or other authority, a right-of-way permit may be issued following the procedures in the 36 CFR part 14 regulations.

5. Proposed paragraph (e) clarifies that applicants for access to Federal and non-Federal minerals and leases outside park boundaries must continue to comply with regulations at 36 CFR part 9.

6. Prohibitions of rights-of-way in wilderness areas. Proposed paragraph (f) clarifies that no rights-of-way will be permitted within NPS areas proposed for or designated as wilderness under the Wilderness Act of September 3, 1964 (78 Stat 890; 16 U.S.C. 1131–1136).

7. Regulations in NPS units in Alaska. Proposed paragraph (g) clarifies that applications for transportation and utility system corridors in Alaska, pursuant to Title 11 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA; 16 U.S.C. 3101 *et seq.*) must meet the requirements of regulations at 43 CFR part 36.

8. Approval of the Regional Director. Proposed paragraph (h) clarifies that new applications for rights-of-way over, under or through the lands and waters subject to NPS regulations must be submitted to the Authorized Officer and approved by the appropriate Regional Director of the NPS or a designee.

Section 14.3 Definitions

This section replaces existing § 14.2. The NPS proposes new definitions to clarify existing or proposed procedures within these regulations. Specific changes to existing definitions or definitions for newly proposed terms are discussed in detail below.

The NPS proposes to add a definition for *applicant,* to include any qualified individual, partnership, corporation, association or other business entity, and any Federal, State or local governmental entity including municipal corporations, submitting an application under this part.

A new definition of *construction* is added to include all temporary or permanent work done under the authority of a right-of-way permit from initiation until completion of the necessary activities to establish the use for which the permit is issued.

The NPS proposes to change the context of the phrase *right-of-way* by changing the definition to mean the Federally owned land authorized to be used or occupied under a right-of-way permit.

The new term *right-of-way* permit is defined as an authorizing document that, without conveying any title interest, provides permission to occupy and use Federal lands and waters within the NPS boundary under certain terms and conditions and for specified purposes that is revocable, terminable and unassignable.

Proposed for deletion from this part is the definition of *Secretary, Director, Regional Director, Superintendent and Park,* all of which are defined at § 1.4. Also proposed for deletion is *Project,* presently defined at § 14.2(f).

Section 14.4 Information Collection

This new section has been included to comply with the Paperwork Reduction Act of 1995.

The information collection requirements contained in § 14.21 of this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507, *et seq.,* and assigned approval number 1004–0060. The information being collected is necessary to enable the Superintendent to issue right-of-way permits. The public is being asked to provide this information in order for the park to determine whether a permit should be issued, to track the number of permits issued and to whom they are issued. These permits are required by 16 U.S.C. 5 and 79, and by 23 U.S.C. 317.

Subpart B—Terms and Conditions of Right-of-Way Permit

This Subpart replaces existing Subpart B, ''Nature of Interest.''

Section 14.10 Purpose

This Subpart describes the nature and limitations of the nonexclusive right-of-way permit to be granted.

Section 14.11 Nature of Right-of-Way Permit

This section replaces and expands existing § 14.6. Paragraph (a) emphasizes that the right-of-way permit does not grant a permanent interest in the premises nor should it be deemed as an abandonment by the United States. Further, the section clarifies the point that the permittee does not gain any estate in fee in the lands or any right whatever to take from Service lands any mineral, consolidated material, earth, stone or wood for construction or other purposes not specifically authorized. In addition, the terms ''easement'' and ''license'' have been removed here and throughout this part to avoid confusion.

Paragraph (b) has been added clarifying that an approved right-of-way permit will be limited to the specific use described in the permit and will not be construed to include the right of the permittee to authorize any other use within the right-of-way unless authorized in writing by the Authorized Officer. Furthermore, right-of-way permits may not be transferred or assigned to other parties without written permission from the Authorized Officer.

Paragraph (c) has been added to allow that additional right-of-way permits may be issued by the NPS within previously permitted rights-of-way. The holders of such permits do not have the right to impose charges for additional users of such rights-of-way.

Paragraphs (d) and (e) describes the maximum widths and expiration dates for right-of-way permits.

Section 14.12 Unauthorized Occupancy

This section replaces existing § 14.8. The text has been modified for clarification and simplification. Occupying or using Federal lands within a park area for constructing, maintaining, operating or removing any utility, highway or other facility, except where specifically authorized by permit according to this part, is prohibited and subject to the penalties established in § 1.3. By making § 14.12 subject to the penalties found at 36 CFR 1.3, § 1.3 will be amended to add part 14.

Section 14.13 Terms and Conditions

This section replaces and significantly reorganizes existing § 14.9. References to waiving requirements are deleted. The NPS proposes the addition and deletion of terms and conditions for clarity and resource protection purposes. These revisions are broadly summarized in the following chart:

Existing Old Section, 36 CFR	Proposed New Section, 36 CFR
§ 14.9(b),(c),(e) & (i)	§ 14.15
(d)	§ 14.13(a)(9)
(f)	§ 14.13(c)(d)(e)
(g)	Partly deleted, & § 14.13(c)
(h)	§ 14.13(a)(5)
(j)	Deleted
(k)	§ 14.13(a)(10)
(l)	§ 14.11; § 14.27
(m)	§ 14.13(i)

Paragraph (a) provides that right-of-way permits are subject to such relevant terms, conditions and additional special stipulations as may be required by the Authorized Officer. New subparagraphs 1 to 14 further specify the types of

requirements to be addressed in the terms and conditions of right-of-way permits, allow the Authorized Officer or a designee to enter and inspect the property and require reimbursement of costs and payment of all fees.

Paragraph (a) reinforces the requirement to comply with State and Federal requirements for public health and safety, environmental protection and siting, construction, operation and maintenance. When State standards are more stringent than the Federal standards, the State standards must be met. To protect archeological, paleontological and historical resources, a requirement is added that activities must be stopped and the Superintendent immediately notified upon discovery of such resources. All artifacts unearthed or discovered are the property of the United States and will be accessioned by the NPS according to the standards of the automated National Catalog System before relinquishing them to the United States.

Paragraph (a) also requires compliance with the specifications pertaining to restoration and rehabilitation of resources as listed in proposed § 14.15. The requirement is added to notify the Authorized Officer in writing not less than 10 working days prior to the start of construction, maintenance or repair on park lands. All work on park lands will be completed in accordance with the terms of the permit, as determined by the Authorized Officer or his representative.

New paragraph (b) establishes that a bond or other security may be required by the Authorized Officer.

Proposed paragraph (c) replaces in part existing paragraph (f) and requires the permittee to notify and compensate the United States for all damages caused to Federal lands or resources by the permittee. It also requires compensation by the permittee for injury, loss or damage arising from the occupancy or use of lands under the permit, including costs of fire suppression or clean up of petroleum or other product spills.

Paragraph (d) expands on existing paragraph (f) in a savings clause to hold the United States free from all liabilities and claims for damages.

New paragraph (e) requires the Authorized Officer to include a strict liability condition in new permits and specify maximum limitation on liability commensurate with the foreseeable risk or hazard associated with the use.

New paragraph (f) makes State and local governments liable to the extent of their laws, or to require at a minimum the repair of any damages or restitution in full.

New paragraph (g) deals with hazardous materials and toxic substances by restricting the use, generation or storage on the right-of-way; requires additional approval before any such use, generation or storage; requires immediate reporting of any leak, spill or release of such substances; requires the applicant to produce and submit to the Authorized Officer a completed emergency action plan.

New paragraph (h) replaces and revises existing paragraph (m) to indicate the authority of the United States to modify or discontinue any permit if it conflicts with authorized use and occupancy of lands under the management authority of the United States.

New paragraph (i) excludes members of or delegates to Congress or Resident Commissioners to any share or part of a right-of-way permit issued under this part.

New paragraph (j) states that failure to comply with the requirements of the permit may lead to its cancellation.

Section 14.14 Additional Terms and Conditions Specific to Electrical Transmission and Communication Lines

This is a new section that revises, simplifies and replaces existing Subpart E—Power Transmission Lines, General; Subpart F—Principles and Procedures, Power Transmission Lines; Subpart G—Radio and Television Sites; and Subpart H—Telephone and Telegraph Lines. Some of these terms and conditions have been moved to the general terms and conditions section at § 14.13. Other sections have been deleted because they are no longer applicable.

It is felt that § 14.13 adequately addresses the criteria that should be applied to any right-of-way permit, regardless of type. The authority for electrical and communication rights-of-way is the same as for other rights-of-way. Existing subparts E through H are repetitive and, except for the few specifics in this new § 14.14 applicable to communication and power lines, have been deleted.

Section 14.15 Rehabilitation and Revegetation Requirements

This new section consolidates existing requirements and establishes new requirements for the rehabilitation and revegetation of rights-of-way during various stages of construction, operation, maintenance and termination. Existing § 14.9 (b),(c),(e) and (i) are incorporated in this new section.

The rehabilitation and revegetation work must be conducted according to adopted NPS policies, guidelines, park standards and applicable vegetation management plans. The permit will be conditioned to require restoration, revegetation and curtailment of erosion of the surface of the land during construction and completion of construction. The permit will also be conditioned to minimize damage and aesthetic values and fish and wildlife habitat and otherwise protect the environment. Further, this section places restrictions on the cutting of vegetation and requires reimbursement to the park of market value for trees cut.

At the termination and rehabilitation stage of the proposed use, the permittee is required to participate in a pretermination conference with the Authorized Officer. Rehabilitation activities must restore natural resources to their pre-disturbance condition to the satisfaction of the Authorized Officer. The Authorized Officer may require rehabilitation and revegetation of the right-of-way to other than the original condition in previously disturbed areas if consistent with the management zones and park purposes prescribed in the park's enabling legislation and General Management Plan. If agreement cannot be reached between the Authorized Office and the permittee, the permittee may appeal the decision of the Authorized Officer following procedures found in § 14.31.

A bond, which is a permit requirement, will not be returned to the permittee until the Authorized Officer conducts a final inspection to determine that all work has been satisfactorily completed and that the revegetation of the site is properly established and self-generating. Failure to do so may result in forfeiture of all or part of the bond. The bond in this instance may be utilized to rehabilitate the site. The bond will never be deposited to the U.S. Treasury as miscellaneous receipts.

Subpart C—Procedures

Section 14.20 Preapplication

This section is renamed Preapplication. Information is given regarding the steps to be followed when seeking a right-of-way over, across or through lands and waters within the boundary of an area of the National Park System. The purpose of this section is to make the proponent aware of the application procedures and probable time requirements, clearances, other permits and licenses required for the use, environmental and management concerns, cost reimbursement, fees and bonding requirements, and special conditions applicable to the area.

Section 14.21 Application Filing

This section revises and expands existing 36 CFR 14.21 and includes existing 36 CFR 14.24, 14.25 and 14.28. Paragraph (a) indicates that the application is to be filed with the Authorized Officer and lists the basic information needed for evaluating the application. The information requested in subparagraphs 1 through 9 is needed in order for the Authorized Officer to determine the impacts of the proposed activity on park resources and to insure that the activity would not conflict with any Federal or State law.

Paragraph (b) requires applicants for rights-of-way to demonstrate their legally recognized right to utilize, transport, store or convey water.

Paragraph (c) replaces existing 36 CFR 14.25(a) regarding map and document requirements to accompany a right-of-way application.

Section 14.22 Timely Construction, Nonconstruction and Nonuse.

This section revises existing 36 CFR 14.29. The major revision places the emphasis on initiating work within two years instead of completing work within two years. Proof of construction completion is still required, with certain extensions possible. Completion of construction dates will be stipulated in the permit.

Section 14.23 Deviation From Approved Right-of-Way

This section replaces existing 36 CFR 14.31, and provides that no deviation from the approved right-of-way can be initiated by the permittee without approval from the Authorized Officer.

Section 14.24 Immediate Suspension of Activities.

This new section provides the Authorized Officer with the authority to issue immediately a temporary suspension of activities order within a permitted right-of-way to protect park resources, public health or safety or the environment. This may be done without an administrative hearing and may be conducted orally. The suspension order may be issued to the permittee or a contractor or subcontractor, or to any representative, agent or employee of the permittee. Activity must be suspended at once upon the issuance of such an order.

The order will remain in effect until it is lifted by the Authorized Officer in writing. By written request, the permittee may request that the suspension be lifted, providing reasons for the request. The Authorized Officer will act upon the permittee's request within five working days of the date the request is filed.

Section 14.25 Cancellation of Permit

This section replaces and revises existing 36 CFR 14.32 and 14.33. It addresses the causes that may result in the cancellation of a permit, rather than the temporary suspension of § 14.24. These include failing to comply with applicable laws and regulations, terms, conditions or stipulations of the permit; or abandoning the right-of-way as described in proposed § 14.22(b).

Before revoking a right-of-way permit pursuant to this section, the Authorized Officer will give the permittee written notice that such action is being contemplated and the reasons therefore and will allow the permittee an opportunity to comply with the terms of the permit.

Section 14.26 Disposition of Personal Property and Improvements Upon Termination of Rights-of-Way.

This section revises and replaces existing § 14.38. All references to monies due the United States and references to six-month limitations for removing property and improvements are deleted. The permittee is now provided with a reasonable amount of time for removal activities after termination, revocation or cancellation of a right-of-way permit. This section also reaffirms the responsibility of the permittee to restore the site to a condition satisfactory to the Authorized Officer. Further, if the permittee fails to remove such improvements or personal property within a reasonable time, as determined by the Authorized Officer, the improvements and personal property will become the property of the United States. However, the permittee will remain liable for all costs of removal of the improvements of personal property and for rehabilitation and revegetation of the right-of-way.

Section 14.27 Amendments

This section clarifies that a right-of-way permit may be amended any time by making a written request. If the amendment is approved, the Authorized Officer may modify the terms, conditions, land use fees and charges, and special stipulations to reflect subsequent conditions, requirements or changes in market value.

Section 14.28 Renewal of Right-of-Way Permits

This section clarifies that a right-of-way permit may be renewed if authorized by law, if it is being used for authorized purposes and if it is consistent with the provisions of this part. In making such a renewal, the Authorized Officer may modify the terms, conditions, land use fees and charges, and special stipulations, to reflect any subsequent conditions, requirements or changes in the market values imposed by Federal and State laws, regulations, and other management plans or land uses.

Section 14.29 Change in Administrative Jurisdiction Over Lands

This section revises existing 36 CFR 14.34. It clarifies that the NPS will not cancel an existing right-of-way permit on Federal lands transferred from the jurisdiction of another Federal agency to the jurisdiction of the NPS; provided, however, that the use does not change from that permitted at the time of the issuance of the original permit.

If a right-of-way permit transferred from another Federal agency to the jurisdiction of the NPS expires, and if the NPS has decided to renew the right-of-way, it must be renewed in accordance with these regulations. The permittee may make a new application for such authorized use as described in this part.

Section 14.30 Transfer of Right-of-Way Permit

This section replaces existing 36 CFR 14.35, 14.36 and 14.37. Any proposed transfer to another party of any right-of-way permit must be filed in accordance with § 14.21. Further, no transfer will be recognized and no further construction or uses permitted, unless and until the transfer is first approved by the Authorized Officer. The transferee must agree to comply with and to be bound by the terms and conditions of the right-of-way permit. All applications for transfer approval must be accompanied by an application fee in accordance with § 14.42(a) and an administrative processing fee in accordance with § 14.42(b).

Section 14.31 Appeal

This is a new section explaining the requirements and process associated with appeals.

Subpart D—Fees and Charges

Section 14.40 Purpose

All references to fees and charges are consolidated under this new Subpart. It places all information regarding fees together in a single, prominent location rather than being scattered throughout the text of the regulations. The numbering sequence and section names are changed from the existing regulations. There are two basic purposes for the four fees and payments delineated in this section. The fees

identified in paragraphs (a), (b) and (c) provide for the reimbursement of costs incurred by the United States in issuing the permit and monitoring the operation of the right-of-way. Paragraph (d) requires a fee, equal to fair market value, for use and occupancy of NPS lands.

The linear and nonlinear fee schedules for reimbursement of costs and monitoring of costs found in existing 36 CFR 14.22 are deleted.

Section 14.41 Exemptions

All references to exemptions from fees are consolidated in this subsection. Exemptions apply:

(a) To Federal agencies or where the use is for the sole and exclusive use and benefit of the NPS;

(b) To use and occupancy fees only, to State and local governments or agencies or instrumentalities thereof where the use is for governmental purposes (consistent with OMB Circular A–25) and for electric or telephone facilities financed pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 31). The proposed rule revises existing 36 CFR 14.22 by now requiring reimbursement of costs from these entities.

(c) To situations where the use of Federal lands is needed for highway purposes under 23 U.S.C. 317;

(d) When Federal law prohibits such fees.

Section 14.42 Reimbursement of Costs

This section reorganizes and replaces existing § 14.22 and retains its title. The reorganization is summarized in the following chart:

Existing Old Section, 36 CFR	*Proposed New Section, 36 CFR*
14.22(a)(1)	14.42(b)(1)
14.22(a)(2)	14.41
14.22(a)(3)	14.42(a)
14.22(a)(4)	14.42(b)(2)
14.22(a)(5)	14.42(b)(3)
14.22(a)(6)	14.42(b)(5)
14.22(a)(7)	14.42(b)(4)
14.22(a)(8)	14.42(b)(6)
14.22(a)(9)	Deleted
14.22(a)(10)	14.42(b)(7)
14.22(a)(11)	14.42(b)(8)
14.22(a)(12)	14.13
14.22(a)(13)	14.42(b)(9)
14.22(a)(14)	14.42(b)(10)
14.22(a)(15)	Deleted
14.22(b)(1)–(4)	14.42(c)(1),(2)

Paragraph (a) establishes a one-time non-refundable application payment of $100 rather than a variable payment based on mileage as in existing 36 CFR 14.22.

Paragraph (b)(1) revises existing § 14.22(a)(1) to add additional requirements that must be complied with by the NPS and makes the applicant responsible for costs associated with such compliance.

Paragraph (b)(2) establishes procedures for estimating costs and payment procedures. A clarification is made that the ''processing payment'' is based on an estimate of cost. It may be required in advance and later refunded or adjusted, based on an accounting of actual costs.

Paragraph (b)(3) requires applicants to pay additional amounts if estimated costs to the United States are exceeded.

Paragraphs (b)(4), (5) and (6) address costs to be borne by the applicant upon withdrawal of an application before completion of the approval process or upon permit denial. Any costs paid to the United States that exceed actual costs will be refunded by the Authorized Officer or future billings will be credited.

Paragraph (b)(7) requires all applicants for a permit determined by the Authorized Officer to be in competition with each other to reimburse the United States according to this section, except that costs not readily attributable to only one applicant will be borne by all applicants equally.

Paragraph (b)(8) allows the Authorized Officer to require security for costs in the section.

Paragraph (b)(9) requires that each party in a joint application for a permit be jointly and severally liable for costs under this section.

When more than one noncompeting application is received for a right-of-way permit found by the Authorized Officer to be for a common right-of-way system, paragraph (b)(10) makes each applicant jointly liable for costs according to this section.

New paragraph (c) addresses fees for inspection and monitoring, replacing existing 36 CFR 14.22(b)(1)–(b)(4). As mentioned above for proposed § 14.40, the linear and nonlinear fee schedules for reimbursement of costs and monitoring of costs in existing 36 CFR 14.22 are proposed for deletion. It has been found that often the tables caused an automatic charging of the minimums expressed in the tables without a thorough analysis of true expenditures of Government funds. Therefore, this paragraph requires the reimbursement of all costs incurred by the NPS or its agents in the processing and monitoring of a right-of-way permit. This change simplifies the discussion of monitoring and inspection fees.

Section 14.43 Fee for Use and Occupancy

This section revises existing 36 CFR 14.26 by stating the method for calculation of the charge for use and occupancy will be the fair market value, including but not limited to an appraisal. This section also amends the requirement for payment by stating that in situations where a lump sum payment is required by the Authorized Officer, the full sum must be submitted within 60 days of the issuance of the permit.

Fees for use and occupancy will be paid beyond termination or cancellation of the permit until equipment removal and site rehabilitation are completed in accordance to Subpart B.

The minimum charge policy for use and occupancy of lands and waters is also amended to be not less than $100 per year for any right-of-way permit issued.

Paragraph (e) revises existing 36 CFR 14.26(d) to clarify that if a charge required by this section is not paid when due, and such default will continue for 60 days after notice, action may be taken to cancel the permit. After default has occurred, any structures or personal property will be considered abandoned.

Paragraph (f) provides for the review of and adjustment of charges at intervals not less than five years.

Subpart E—Highway Easement Deeds

This Subpart replaces existing part 14, Subpart D—Under Title 23, U.S.C. (Interstate and Defense Highway System). The title has been simplified to better describe the subject covered and to reinforce that rights-of-way interest for highways is conveyed through highway easement deeds.

Section 14.50 Rights-of-Way for Highway Purposes

This section revises and replaces existing 36 CFR 14.50. Paragraph (a) clarifies that right-of-way requests for highways over lands or interests in lands under the jurisdiction of the NPS may only be considered if the Secretary of Transportation, acting under the provisions of 23 U.S.C. 138, determines that there is no feasible and prudent alternative to the use of such land, and that any action will include all possible planning to minimize adverse impacts to NPS lands and resources.

Paragraph (b) sets up the procedures to be followed between the Secretary of Transportation and the Secretary of the Interior if the Secretary of Transportation determines that there is no feasible and prudent alternative for the use, and either no adverse impacts will occur, or such adverse impacts that might occur have been planned for. The Secretary of the Interior has four months to approve any deeded interest transfer.

Paragraph (c) outlines what the Secretary of Transportation will then do

when both Secretaries for Transportation and Interior agree on the request. When both Secretaries approve the request, the Secretary of Transportation will make the arrangements necessary to convey to the State or other person requesting such use, adequate rights-of-way and control of access thereto. The right-of-way interest will be conveyed through a highway easement deed.

The Secretary of the Interior does not possess the authority to issue rights-of-way for roads in parks under 36 CFR part 5 or 79. The only authority for granting such rights-of-way for roads is at 23 U.S.C. 317. Under 23 U.S.C. 317 authority, rights-of-way may be granted for highway purposes only for Federal aid primary or Federal aid secondary road networks, and for the Interstate and Defense Highway Systems.

Section (c) also deletes existing 36 CFR 14.50(b)(2) and 14.51 regarding no intent to vest in a State a right of appropriation of an interest in land, contrary to the discretion of the Secretary.

Section 14.51 Additional Rights-of-Way within Highway Rights-of-Way

This section revises existing 36 CFR 14.59, requiring a separate permit for any additional rights-of-way to be authorized within the same right-of-way, but not for highway purposes. Any relocation or change of any additional right-of-way made necessary by the highway will be accomplished at no expense to the United States.

Section 14.52 Termination of Highway Use

This section revises existing 36 CFR 14.52. When the lands are no longer needed, the control of the lands will revert to the NPS. Upon notification, the Secretary of the Interior will immediately notify the Secretary of Transportation and take the necessary action to revoke and abandon the highway easement deed and revest the NPS with clear and exclusive title of the unencumbered land.

Subpart F—[Reserved]

This Subpart is reserved for future terms and conditions governing the operation of valid R.S. 2477 highways across NPS areas.

Organizational Summary

The NPS has prepared the following organizational summary and distribution table to assist in the location and analysis of the proposed revisions to 36 CFR part 14:

Numbering

Existing Old Section, 36 CFR	*Proposed New Section, 36 CFR*
14.1	14.2
14.2	14.3
14.5	Deleted
14.6	14.11
14.7	Deleted
14.8	14.13
14.9	14.13, 14.15, 14.27
14.10	14.2
14.20	14.20
14.21	14.21
14.22	14.41, 14.42
14.23	Deleted
14.24	14.21
14.25	14.21
14.26	14.40, 14.43
14.27	Deleted
14.28	14.21
14.29	14.22
14.30	14.22
14.31	14.23
14.32	Deleted
14.33	14.25
14.34	14.30
14.35	14.31
14.36	14.31
14.37	14.31
14.38	14.27
14.50	14.50
14.51	Deleted
14.52	14.52
14.53	Deleted
14.54	Deleted
14.55	Deleted
14.56	Deleted
14.57	Deleted
14.58	14.14
14.59	14.51
14.60	Deleted
14.61	Deleted
14.70	Deleted
14.71	Deleted
14.75	Deleted
14.76	14.15
14.77	Deleted
14.78	Deleted
14.90	Deleted
14.91	Deleted
14.95	Deleted
14.96	Deleted
New Sections	
14.1	
14.4	
14.10	
14.15	
14.24	
14.28	
14.29	
14.40	
14.42	

Drafting Information: The primary authors of this proposed rule are Pat Bentley, Northeast Region, NPS, Philadelphia, PA; Jenness Coffey, Division of Wildlife and Vegetation, Washington, D.C.; Tony Sisto, Superintendent, Fort Vancouver, WA; Rick Wagner, Columbia Cascades Land Resources Program Office, Seattle, WA; Dick Young, Special Park Use Coordinator, Colonial National Historical Park, VA; and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon a thorough analysis of the comments.

Paperwork Reduction Act

The collection of information as described in § 14.21 of this proposed rule has been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1004–0060. The information being collected is necessary to enable the Superintendent to issue right-of-way permits. The public is being asked to provide this information in order for the park to determine whether a permit should be issued, to track the number of permits issued and to whom they are issued. These permits are required by 16 U.S.C. 5 and 79, and by 23 U.S.C. 317.

The public reporting burden for the collection of information in § 14.21 is estimated to average from 2–20 hours per response depending on the size of right-of-way applied for, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Specifically, the NPS needs the following information to issue a permit:

1. Name, address and telephone number of the company requesting a right-of-way permit.
2. Contact person representing the company.
3. Type of right-of-way permit requested.
4. Rehabilitation and revegetation requirements, if required.
5. Environmental assessment, if required.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Docket No. 1024–AC01, National Park Service, 1849 C Street, NW, Washington, D.C. 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1004–0060), Washington, D.C. 20503.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The overall economic effects of this rulemaking will be negligible. The updated fee schedules are consistent with fair business practices, are minor and are present to allow the recovery of costs by individual parks. There are no expected increases in costs of prices for consumers, the Federal government or geographic regions, and only minor increases for individual industries, State or local governments and agencies.

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

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 8–4(2)).

The NPS has determined that this proposed rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses that might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 14

Electric power, Highways and roads, Public lands—rights-of-way.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 460 1–6a(e), 469(k); D.C. Code 8–137, 40–721 (1981).

2. Section 1.3 is amended by revising paragraph (a), to read as follows:

§ 1.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in parts 1 through 7 and 12 through 14 of this chapter, within a park area not covered in paragraph (b) or (c) of this section, shall be punished by a fine as provided by law, or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

* * * * *

3. 36 CFR part 14 is revised to read as follows:

PART 14—RIGHTS-OF-WAY

Subpart A—Right-of-Way Permits: General

Sec.
14.1 Purpose.
14.2 Applicability and scope.
14.3 Definitions.
14.4 Information collection.

Subpart B—Terms and Conditions of Right-of-Way Permit

14.10 Purpose.
14.11 Nature of right-of-way permit.
14.12 Unauthorized occupancy.
14.13 Terms and conditions.
14.14 Additional terms and conditions specific to electrical transmission and communication lines.
14.15 Rehabilitation and revegetation requirements.

Subpart C—Procedures

14.20 Preapplication.
14.21 Application filing.
14.22 Timely construction, nonconstruction and nonuse.
14.23 Deviation from approved right-of-way.
14.24 Immediate suspension of activities.
14.25 Cancellation of permit.
14.26 Disposition of personal property and improvements upon termination of right-of-way permit.
14.27 Amendments.
14.28 Renewal of a right-of-way permit.
14.29 Change in administrative jurisdiction over lands.
14.30 Transfer of right-of-way permit.
14.31 Appeal.

Subpart D—Fees and Charges

14.40 Purpose.
14.41 Exemptions.
14.42 Reimbursement of costs.
14.43 Fee for use and occupancy.

Subpart E—Highway Easement Deeds

14.50 Rights-of-way for highway purposes.
14.51 Additional uses within highway rights-of-way.
14.52 Termination of highway use.

Authority: 16 U.S.C. 5, 79; 23 U.S.C. 317.

Subpart A—Right-of-Way Permits: General

§ 14.1 Purpose.

The purpose of the regulations in this part is to:

(a) Prescribe the procedures by which an applicant may apply for a right-of-way permit and the terms and conditions under which the National Park Service may authorize and permit a right-of-way within a park area.

(b) Regulate, control and direct all authorized activities pursuant to a right-of-way permit or other legal instrument, to ensure that there is no feasible and prudent alternative to the proposed right-of-way and such activities are not exercised in derogation of the values and purposes for which the various park areas have been established, except as may have been or will be directly and specifically provided by Congress.

§ 14.2 Applicability and scope.

(a) The regulations contained in this part apply to authorized rights-of-way activities occurring upon, under, over, across or through federally owned lands or waters administered by the National Park Service within the exterior boundaries of park areas.

(b) The regulations contained in this part do not apply to right-of-way construction, operation and maintenance when said rights-of-way are owned, controlled or operated by the National Park Service.

(c) Unless otherwise provided for in law, permits issued pursuant to this part will only be for those rights-of-way permits where:

(1) There is no prudent or feasible alternative for the right-of-way outside the boundaries of a park area; and

(2) The use will not be in derogation of park resources and values and other applicable statutory standards authorizing rights-of-way permits are met.

(d) The regulations in this part do not apply to operations in connection with the exploration, development, production and transportation of non-Federally owned oil and gas originating in units of the National Park System.

Such operations are subject to regulations found at 36 CFR part 9, subpart B. The construction, operation and maintenance of rights-of-way for new and existing transpark petroleum product pipelines occupying park lands that originate and terminate outside a park unit, must comply with the requirements of 36 CFR part 9, subpart B. Where issuance of a right-of-way permit is specifically authorized by a park unit's enabling statue or other authority, such right-of-way must also comply with the procedures set forth in this part.

(e) The regulations in this part do not apply to applicants seeking access to Federal mineral leases or non-Federal minerals outside park boundaries. Those applicants must meet the requirements of 36 CFR part 9.

(f) No new right-of-way permit will be issued for activities within park areas on lands or waters proposed for or designated as wilderness under the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

(g) Applications for transportation and utility system corridors in Alaska pursuant to Title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3161 *et seq.*) must be made under regulations at 43 CFR part 36.

(h) Applications for a right-of-way permit for a park area will be submitted to the Authorized Officer for the park area. Pursuant to any statute applicable to lands and waters administered by the National Park Service and pursuant to the regulations in this part, right-of-way permits are subject to the approval of the Director. The Director may delegate this approval authority in writing.

§ 14.3 Definitions.

The following definitions apply to this part:

Applicant means any individual; any partnership, corporation, association or other business entity; and any Federal, State or local governmental entity, including a municipal corporation, submitting an application under this part.

Authorized Officer means a park area superintendent or a delegate appointed in writing by the superintendent.

Construction means any work, whether permanent or temporary in nature, under the authority of a right-of-way permit from initiation until completion of the necessary activities to establish the use for which the permit is issued.

Right-of-way means the land or water area in a park area authorized to be used or occupied under a right-of-way permit.

Right-of-way permit is an authorizing document that, without conveying any title interest, provides permission to occupy and use lands or waters within a park area under certain terms and conditions and for specified purposes, which is nonexclusive, revocable, terminable and unassignable.

§ 14.4 Information collection.

(a) The information collection requirements contained in § 14.21 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*, and assigned approval number 1004–0060. The information being collected is necessary to enable the Superintendent to issue right-of-way permits. The public is being asked to provide this information in order for the park to determine whether a permit should be issued, to track the number of permits issued and to whom they are issued. These permits are required by 16 U.S.C. 5 and 79, and by 23 U.S.C. 317.

(b) The NPS needs the following information to issue a permit:

(1) Name, address and telephone number of the company requesting a right-of-way permit.

(2) Contact person representing the company.

(3) Type of right-of-way permit requested.

(4) Rehabilitation and revegetation requirements, if required.

(5) Environmental assessment, if required.

(c) The public reporting burden for the collection of information in § 14.21 is estimated to average from 2–20 hours per response depending on the size of right-of-way applied for, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Docket No. 1024-AC01, National Park Service, 1849 C Street, NW, Washington, D.C. 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1004–0060), Washington, D.C. 20503.

Subpart B—Terms and Conditions of Right-of-Way Permit

§ 14.10 Purpose.

The purpose of this subpart is to describe the nature, limitations and the terms and conditions of a right-of-way permit issued in accordance with this part. This subpart does not apply to highway easement deeds that are addressed in subpart E of this part.

§ 14.11 Nature of right-of-way permit.

(a) A right-of-way permit is not a grant of permanent interest, an abandonment of use and occupancy of the premises by the United States or a waiver of any regulatory authority of the United States. The use permitted will not be greater than a right-of-way permit revocable at the discretion of the Authorized Officer, unless otherwise specifically authorized by statute. The permitted use does not give the permittee an estate in fee, limited estate, interest in the land or any right to take from a park area any mineral, consolidated material, earth, wood or stone for construction or other purposes not specifically permitted.

(b) A right-of-way permit will only be for the specifically described use approved in writing by the Regional Director. A right-of-way permit may not be transferred or assigned to another party except as otherwise provided in this part.

(c) A right-of-way permit does not limit the authority of the Regional Director to approve additional right-of-way permits within or adjacent to the permitted right-of-way, nor does it authorize a permittee to impose charges for the additional use of the right-of-way made subject to such right-of-way permits.

(d) The width or area of a right-of-way under this part is determined by the Authorized Officer and will not be greater than that required for the permitted use, nor exceed that authorized by law.

(e) A right-of-way permit will not be issued for a period longer than ten years, unless otherwise specified in the permit criteria.

§ 14.12 Unauthorized occupancy.

Occupying or using Federal lands within a park area for constructing, maintaining, operating or removing any utility, highway or other facility, except where specifically authorized by permit according to this part, is prohibited and subject to the penalties established in 36 CFR 1.3.

§ 14.13 Terms and conditions.

(a) The Authorized Officer will include in a right-of-way permit terms and conditions pertaining to the extent, duration, location, construction, operation, maintenance and termination of activities authorized by the permit and additional stipulations to include,

but not be limited to, requirements for the permittee to:

(1) Comply with State and Federal laws and regulations applicable to the park area and the authorized use for which the right-of-way permit is issued.

(2) Ensure that construction or other activities concerning right-of-way permits will not violate applicable air and water quality standards or other standards established by or pursuant to applicable Federal or State law and regulations or Executive Order.

(3) Ensure compliance with applicable State standards for public health and safety, environmental protection and siting, construction, operation and maintenance when those standards are more stringent than applicable Federal standards.

(4) Ensure that the facilities and appurtenances constructed on the prescribed right-of-way are maintained and operated consistent with the purposes of the permit.

(5) Comply with other applicable statutes and regulations with respect to the occupancy and use of a park area as may be found by the Authorized Officer to be necessary as a condition to the approval of the right-of-way permit to render its use compatible with the public interest.

(6) Halt any activities and immediately notify the Authorized Officer upon discovery of archeological, paleontological or historical resources. The permittee must submit to the Authorized Officer a written report of any findings during the construction phase, and otherwise comply with the requirements of the National Historic Preservation Act, the Archeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. All artifacts unearthed or discovered are the property of the United States and must be accessioned by the permittee according to the standards of the automated National Catalog System before relinquishing same to the United States.

(7) Comply with the specifications as listed in § 14.15 concerning restoration and rehabilitation of National Park System resources.

(8) Notify the Authorized Officer, in writing, no fewer than ten working days before the start of construction and initiate construction within two years of the date of permit approval.

(9) Initiate construction within two years of the date of permit approval, or some other time acceptable to the authorizing official, and establish a reasonable time for the disposition of personal property upon cancellation or termination of a right-of-way permit pursuant to § 14.26.

(10) Establish fire prevention systems and ensure initial suppression capability for wildland and structural fires on or near the park area to be occupied under the right-of-way permit. This may include sprinkler systems for structures and/or agreements with local fire agencies.

(11) Ensure nondiscrimination in the construction, operation and maintenance of the authorized use. The permittee will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and will require an identical provision to be included in all authorized subcontracts.

(12) Operate and maintain safe practices during the construction, operation and maintenance of the authorized use and ensure occupational safety and the public health are not jeopardized.

(13) Ensure that the Authorized Officer has access to the area and facilities at any time without restriction.

(14) Agree to reimburse all costs to the government and to pay all fees according to subpart D of this part.

(b) A bond or other security satisfactory to the Authorized Officer may be required to secure the obligations imposed by the permit and applicable laws and regulations.

(c) A permittee will promptly notify the Authorized Officer of, and compensate the United States for, the full value of all injury, loss or damages to the lands and resources, or other property of the United States caused by the permittee, its contractors, agents or employees, as determined by the Authorized Officer, and will be responsible for costs incurred by the National Park Service that result from any fire suppression activities or cleanup of petroleum product or hazardous waste spills caused by the permittee.

(d) Upon accepting a right-of-way permit, a permittee agrees that such permit is issued upon the express condition that the United States, its agents and employees, will be free from all liabilities and claims for damages and/or suits for, or because of any injury or death to any person or property, whether to the person or property of the permittee, its agents or employees, or third parties, from any cause during the term of this permit occasioned by any occupancy or use of the permitted right-of-way, or any activity carried on by the permittee in connection therewith; and that the permittee agrees to indemnify, defend, save and hold harmless the United States, its agents and employees, from all liabilities, charges, expenses and costs because of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring, or damages growing out of the same.

(e) The Authorized Officer will include a condition imposing strict liability and specifying a maximum limitation on liability that, in the judgement of the Authorized Officer, is commensurate with the foreseeable risk or hazards associated with the permittee's use of park land.

(f) A permittee that is a State or local government or agency or instrumentality thereof, will be liable to the fullest extent its laws allow at the time the right-of-way permit is issued. When the power to assume liability is limited by law, the permittee will be required to repair damages or make restitution to the fullest extent of its powers at the time any damage or injury occurs.

(g) Hazardous materials and toxic substances; emergency action plan requirements. (1) The permittee will not use, generate or store on the right-of-way any toxic substance as defined by the Toxic Substances Control Act of 1976 (15 U.S.C. 2601–1692), or hazardous substance or hazardous waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601–9675), or the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901–6992k), except as provided in the permit.

(2) The permittee must request written approval from the Authorized Officer before the use, generation or storage of any toxic or hazardous substance or hazardous waste.

(3) The permittee must immediately notify the Authorized Officer of any leak, spill or release of such substances, in addition to any other reports as required under Federal and State law.

(4) The applicant or permittee must show to the satisfaction of the Authorized Officer that an emergency action plan, including plans for containment and cleanup of any spills, and any other conditions required by law, has been completed before the use, generation or storage of any toxic or hazardous substance or hazardous waste.

(h) A right-of-way permit may be subject to modification, adaptation or cancellation, without liability or expense to the United States, if the Authorized Officer determines such action to be necessary to avoid conflict with the uses for which the park area was established.

(i) No member of or delegate to Congress or Resident Commissioner will be admitted to any share or part of a right-of-way permit or to any benefit

that may arise from it, but this provision will not apply to this permit if made with a corporation for its general benefit.

(j) Failure to comply with any of the requirements of the permit may lead to cancellation of the permit by the Authorized Officer.

§ 14.14 Additional terms and conditions specific to electrical transmission and communication lines.

For an electrical transmission or communication line, a permittee will comply with the following terms and conditions in addition to those in § 14.13:

(a) The permittee will protect all surrounding communication and electrical transmission lines from contact, and all highways and railroads from obstruction, and maintain all transmission lines in such manner as not to menace life or property, in accordance with the National Electric Safety Code, which is available from: National Fire Protection Association, 1 Batterymarch park, Quincy MA 02269–9101. Telephone 617–770–3000.

(b) The permittee is responsible for avoiding, and liable to the extent of law for causing, any inductive or conductive interference between any transmission line or other works constructed, operated or maintained on the right-of-way, and any radio installation, telephone line or other communication facilities.

§ 14.15 Rehabilitation and revegetation requirements.

The permittee will rehabilitate and restore those areas disturbed through construction and/or maintenance activities authorized by the right-of-way permit to the satisfaction of the Authorized Officer. If the right-of-way is to be constructed in a disturbed area, then the Authorized Officer may require further rehabilitation and revegetation of the right-of-way in compliance with the parks enabling legislation and General Master Plan.

(a) The permittee will clear and keep cleared, as necessary, the lands within the right-of-way to the extent and manner directed by the Authorized Officer, and to dispose of all vegetative and other material cut, uprooted or otherwise accumulated during the construction and maintenance activities in an agreed upon manner.

(b) The permittee will not cut, destroy, or remove timber without first obtaining written permission from the Authorized Officer. The permittee will reimburse the United States for the market value of merchantable timber or other resources removed.

(c) The permittee will repair, rebuild or replace in kind any roads, fences and trails destroyed or damaged by construction activities, and to provide and maintain suitable crossings for all roads and trails that intersect the works authorized by the right-of-way permit.

(d) The permittee will meet additional standards as agreed upon by the permittee and the authorized officer.

(e) Bonding. The Authorized Officer may require the permittee to furnish an acceptable security by bond, guaranty, cash, certificate of deposit or other means for the costs of rehabilitation and revegetation. The Authorized Officer will not release the bond or security until a final inspection is conducted to determine that all rehabilitation requirements have been satisfactorily completed and that the revegetation of the right-of-way is properly established and self-generating. Failure to rehabilitate the site will result in the forfeiture of all or part of the bond. The bond in this instance will be utilized to rehabilitate the site. The bond will never be deposited to the U.S. Treasury as miscellaneous receipts.

(f) Termination. (1) Prior to termination of the right-of-way permit and implementation of rehabilitation and revegetation, the permittee will consult with the Authorized Officer to insure that the permittee fully understands and will comply with the agreed upon rehabilitation and revegetation measures as described in the permit.

(2) Failure of the permittee to initiate or complete rehabilitation within the time limits and to the standards imposed by this section will be grounds for forfeiture of all or so much of the bond or security as the Authorized Officer determines is necessary to achieve successful rehabilitation.

(3) Should the permittee disagree with the decision of the Authorized Officer, the permittee may follow the appeal process found in § 14.31.

Subpart C—Procedures

§ 14.20 Preapplication.

The applicant should contact the National Park Service office responsible for management of the park area before applying for a right-of-way permit. Information concerning application procedures, time requirements, clearances, other permits and licenses that may be required for the use, environmental and management concerns, cost reimbursement, fees and bonding requirements, and any other conditions applicable to the area will be provided.

§ 14.21 Application filing.

(a) Applications for a right-of-way permit must be filed with the Authorized Officer for that area. An application will comply with § 14.42, and will also include, but not be limited to, the following information:

(1) Name and address of the applicant and the applicant's authorized agent, if applicable.

(2) A description of the proposed use.

(3) A survey map or drawing acceptable to the Authorized Officer showing limits of the proposed use area as specified in paragraph (c) of this section.

(4) A statement of the possible environmental, social and economic impacts of the proposal and its alternatives.

(5) A statement describing possible impacts of the proposal and its alternatives on any known cultural, historic and archeological resources.

(6) A description of the alternatives, routes and modes considered by the applicant when developing the proposal, including alternate routes not using the park area and a written statement of why the route through the park area is otherwise necessary.

(7) Proof of the possession of or application for any Federal, State or other licenses, permits or other evidence of compliance for the proposed use.

(8) Certification that the applicant is a citizen of the United States, or in the case of a partnership, association or corporation, as being subject to the laws of any State or the United States and that the information submitted is correct to the best of the applicant's knowledge.

(9) Proposed beginning and completion dates for the proposed use.

(b) Evidence of right to use water. If the proposed use involves the storage, diversion or conveyance of water, the applicant will file a statement of the proper State official, or other appropriate evidence, showing a legally recognized right to utilize, transport, divert and/or store water. Where the State requires an applicant to obtain a right-of-way permit as a prerequisite to the issuance of evidence of a water right, a right-of-way permit may be issued conditioned upon the subsequent filing within a specified time of the required evidence of rights to use, transport, divert and/or store water from the State official. The right-of-way permit will terminate at the expiration of such specified period if the evidence is not produced.

(c) Maps. An applicant must submit with the permit application three copies of drawings and maps that are sufficiently accurate, to the satisfaction of the Authorized Officer, so that the

right-of-way may be precisely located on the ground by any competent engineer or land surveyor, and, at a minimum:

(1) Show the park boundaries and prominent features in the vicinity of the requested use.

(2) Have an exactly located and described point of beginning and ending to locate accurately where the proposed use enters and exits the park area and to show also any prominent or significant park features the proposed use will pass, go through, under or over.

(3) Be of a scale appropriate to the proposed use, but large enough to show detail, with the scale(s) shown on the face of the drawing.

(4) Present the proposed use in strips using match lines rather than reduce the map scale, if the length of the proposed use is such that it cannot be shown as one continuous line on a standard engineering drawing.

§ 14.22 Timely construction, nonconstruction and nonuse.

(a) Unless otherwise provided by law, or otherwise specified in the permit, construction must begin within two years of the date the right-of-way permit is issued.

(b) Failure of the permittee to use or occupy the right-of-way for the purpose for which the permit was issued for any continuous two-year period will constitute a presumption of abandonment.

(c) The Authorized Officer will consider applications for an extension of the beginning date for construction or right-of-way rehabilitation upon receipt of the following:

(1) A request from the permittee 90 days before the termination of the two-year period under paragraph (a) of this section;

(2) A statement justifying the need for the extension including, but not limited to, the permittee's demonstrated intention to accomplish the permitted work, meet construction schedules and initiate rehabilitation efforts; and

(3) Documentation of evidence of extenuating circumstances beyond the control of the permittee that require the extension.

(d) Failure of the permittee to comply with the requirements of this section will result in cancellation of the permit.

(e) Completion of construction. (1) Construction must be completed within the period set forth in the permit.

(2) Within 90 days after completion of construction, or after all restoration, rehabilitation and revegetation requirements have been satisfied, whichever is later, the permittee will notify the Authorized Officer of completion and show, to the satisfaction of the Authorized Officer, that all applicable permit criteria have been met.

§ 14.23 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way will be initiated by the permittee without the prior written approval of the Authorized Officer. The Authorized Officer may require the filing of a new application in accordance with § 14.21 where, in the Authorized Officer's judgment, a deviation significantly changes the intent or purposes of the original right-of-way, or that has the potential to cause greater or substantially different impacts to park resources than the original approved use.

§ 14.24 Immediate suspension of activities.

(a) If the Authorized Officer determines that an immediate temporary suspension of activities within a permitted right-of-way is necessary to protect park resources, public health or safety, or the environment, the Authorized Officer may promptly suspend such permitted activities as deemed appropriate.

(b) The Authorized Officer may issue an immediate temporary suspension order orally, to be followed in writing, at the site of the activity to the permittee or a contractor or subcontractor of the permittee, or to any representative, agent or employee of the permittee. Any oral order will be followed with a written order.

(c) Upon the issuance of a suspension order, the permittee or on-site agent-in-charge must suspend all activity associated with the suspension order. An order of immediate suspension of activities will remain in effect until the Authorized Officer issues a written order permitting resumption of activities.

(d) Any time after an order of immediate suspension has been issued, the permittee may file a request with the Authorized Officer for permission to resume activities. The request will be in writing and will contain a statement of the facts supporting the request for resumption.

(e) The Authorized Officer will grant or deny the permittee's request to resume activities within five working days of the date the permittee's request is filed.

(f) The United States will not be liable for any claims arising from the immediate temporary suspension of the permittee's use.

§ 14.25 Cancellation of permit.

(a) The Authorized Officer may cancel a right-of-way permit upon a determination that the permittee has failed to comply with applicable laws, regulations or Executive Orders, or any special terms, conditions or stipulations of the right-of-way permit, or has abandoned the right-of-way as described in § 14.22.

(b) Before canceling a right-of-way permit pursuant to paragraph (a) of this section, the Authorized Officer will give the permittee written notice that such action is being considered and the reasons therefore, and will establish in such notice a deadline for the permittee to comply with the terms of the permit.

(c) No right-of-way permit will be canceled except on the issuance of a specific written order of cancellation by the Authorized Officer.

(d) No administrative proceeding will be required in those cases where the permit terminates under the terms specified within the permit.

§ 14.26 Disposition of personal property and improvements upon termination of right-of-way permit.

After termination of a right-of-way permit, the permittee will, unless otherwise directed in writing by the Authorized Officer, remove improvements or personal property and restore the site to a condition satisfactory to the Authorized Officer. If the permittee fails to remove such improvements or personal property, all improvements and personal property will become the property of the United States, but the permittee will nevertheless remain liable for all costs of removal of the improvements of personal property and for rehabilitation and revegetation of the right-of-way.

§ 14.27 Amendments.

(a) A right-of-way permit may be amended any time, either at the discretion of the Authorized Officer, or upon a written filing by the permittee requesting amendment of the permit. Such amendments shall be accomplished with the written and signed agreement of both parties.

(b) In making such amendments, the Authorized Officer may modify the terms, conditions or fees and charges of the permit, and impose new stipulations to reflect any changes in conditions, requirements or market values.

(c) The filing of a new application pursuant to § 14.21 may be required if the Authorized Officer determines that the requested amendments require significant deviation from the approved right-of-way permit.

§ 14.28 Renewal of a right-of-way permit.

(a) Upon written request to the Authorized Officer by the permittee, and within the six months before the stated date of expiration, the Authorized Officer may approve the renewal of any existing right-of-way permit in accordance with the provisions of this section and any other applicable laws and regulations in effect at the time of renewal, so long as the activity or facility will continue to be used for the purposes authorized.

(b) Before renewal, the Authorized Officer may modify the terms, conditions, land use fees and charges, and special stipulations of the permit to reflect any changed conditions, requirements, land uses, market values or Federal and State laws, Federal Executive Orders, regulations or management plans.

§ 14.29 Change in administrative jurisdiction over lands.

(a) Except as otherwise provided for by law, a change in the administrative jurisdiction over the lands and waters from another Federal agency to the National Park Service will not cause an existing right-of-way permit, grant or other authorizing instrument to be canceled, if there is no change in the approved use.

(b) The holder of the permit, grant or other authorizing instrument must comply with all additional laws, executive orders and regulations applicable to the park area.

(c) When a right-of-way permit, grant or other authorizing instrument transferred from another Federal agency to the jurisdiction of the NPS expires, the holder of the permit, grant or authorizing instrument may apply for a right-of-way permit pursuant to this part, to the Authorized Officer to continue the use of the right-of-way. The renewal procedures of § 14.28 are not applicable to this section.

§ 14.30 Transfer of right-of-way permit.

(a) A proposal by the permittee to transfer any right-of-way permit to another party, in whole or in part, will be made in accordance with applicable provisions of § 14.21, as determined by the Authorized Officer.

(b) No transfer of a permit will be recognized, and no construction or uses allowed, until the transfer is first approved in writing by the Authorized Officer. Such transfer must be filed in accordance with applicable regulations at the time of transfer and must be supported by the stipulation that the transfer applicant agrees to comply with, and to be bound by, the terms and conditions of the right-of-way permit.

(c) All filings for transfer approval made pursuant to this section must be accompanied by an application fee in accordance with § 14.42(a) and an administrative processing fee in accordance with § 14.42(b).

§ 14.31 Appeal

Should the permittee disagree with a decision of the Authorized Officer in connection with the regulations in this part, the permittee may file a written statement to that effect with the Authorized Officer. The written statement will detail the reason(s) why the decision is contrary to, or in conflict with the facts, the law, these regulations, or is otherwise in error. No appeal will be considered unless it is filed with the Authorized Officer within thirty (30) days after the date of notification to the permittee of the action or decision. Upon receipt of such written statement, the Authorized Officer shall promptly review the action or decision and either reverse the original decision or prepare a separate statement, explaining that decision and the reasons, and forward the statement and record of appeal to the Regional Director of the geographic area in which the Authorized Office is located, for review and decision.

Subpart D—Fees and Charges

§ 14.40 Purpose.

The purpose of this subpart is to delineate and establish procedures for the payments of the unique fees and charges associated with a right-of-way permit. Payments are required pursuant to this subpart for the following categories:

(a) An application processing payment;

(b) A reimbursement for administrative and other appropriate costs incurred by the National Park Service;

(c) An annual payment for monitoring and inspection; and

(d) A fee for the use and occupancy of a park area at fair market value.

§ 14.41 Exemptions.

The regulations of this subpart do not apply to the following:

(a) Federal agencies, or where the right-of-way is for the sole and exclusive use and benefit of the National Park Service.

(b) For § 14.43 only, State and local governments or agencies or instrumentalities thereof, including counties, parishes, boroughs and other taxing districts, where the use is exclusively for respective governmental purposes and for electric or telephone facilities financed pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 31). Provided, however, that if an applicant derives revenue from charges levied on customers for services as would a profit making corporation or business, the applicant is not exempt from charges under this subpart.

(c) When Federal law specifically prohibits the charging of fees, or specifically establishes a different fee schedule, rate, structure or other procedure.

§ 14.42 Reimbursement of costs.

(a) Application payment. An applicant for a right-of-way permit must submit with each application a one-time payment of $100 to cover initial processing costs.

(b) Administrative processing. (1) An applicant for a right-of-way permit will reimburse the United States for administrative and other appropriate costs incurred by the National Park Service in processing the application.

(2) When an application is received, the Authorized Officer will provide the applicant an estimate, based upon the best available information, of costs expected to be incurred by the United States in processing the application. When the estimated costs exceed $2,500, the Authorized Officer will either require the applicant to remit the full payment of the estimated costs before processing the application, or require a bond or other security pursuant to paragraph (b)(8) of this section. Such payments may be subsequently refunded or adjusted as provided by paragraph (b)(6) of this section.

(3) Before the issuance of a right-of-way permit, the applicant will be required to pay any additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (b)(1) and (2) of this section.

(4) An applicant who withdraws an application for a permit before a decision is reached on the issuance of the permit is responsible for costs incurred by the United States in processing such application up to the date upon which the Authorized Officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement by the applicant of such incurred costs will be due within 30 days of receipt of notice of the amount due.

(5) An applicant whose application is denied is nevertheless responsible for paying the application and administrative costs incurred by the

National Park Service in processing the application. Additional costs that have not been paid in accordance with paragraphs (b)(1), (2) and (3) of this section, are also due within 90 days of receipt of notice from the National Park Service of the amount due.

(6) If payment exceeds the actual costs incurred pursuant to paragraphs (b)(2) and (3) of this section, the National Park Service will refund the amount under the authority of 43 U.S.C. 1374, or may adjust future billings to credit the applicant's account for overpayment. Neither an applicant nor a permittee may adjust any billing by the National Park Service without prior written approval.

(7) When two or more applications for a right-of-way permit are filed that the Authorized Officer determines to be in competition, each applicant will reimburse the National Park Service according to paragraphs (b)(1) through (6) of this section, except that costs not readily attributable to only one of the applications, such as costs for an environmental impact statement, will be paid by each applicant in equal shares.

(8) The Authorized Officer may require an applicant to furnish security of an acceptable amount by bond, guaranty, cash, book entry deposits or other means, for costs under paragraphs (b)(1) through (7) of this section. The Authorized Officer may require such additional security or substitution of security as the Authorized Officer deems appropriate.

(9) When more than one person, partnership, corporation, association or other entity apply together for a right-of-way permit, each such applicant will be jointly and severally liable for costs under paragraphs (b)(1) through (6) of this section.

(10) When two or more noncompeting applications for right-of-way permits are received for what, in the judgment of the Authorized Officer, is a common right-of-way system, all applicants will be jointly and severally liable for costs under paragraphs (b)(1) through (6) of this section for the entire system, subject however, to the provisions of paragraphs (b)(8) and (9) of this section.

(c) Monitoring and inspection. (1) The permittee will make in advance an annual payment as determined by the Authorized Officer, to the National Park Service for monitoring and inspection of the right-of-way. Such payment will be sufficient to cover all costs by the National Park Service or its agents for monitoring the construction, operation, maintenance and termination of all right-of-way activities and facilities, and for the protection of surrounding lands.

(2) Within 30 days of receipt of a bill from the National Park Service for the estimated annual monitoring and inspection costs for the upcoming year, the permittee will remit such estimated payment to the National Park Service.

(3) In any year, if annual costs to the National Park Service exceed the estimate because of unforeseen circumstances, the permittee will be responsible for paying all such additional costs either as a one-time payment or as an adjustment of the next annual monitoring charge.

§ 14.43 Fee for use and occupancy.

(a) Once an application has been approved, payment in advance is required before the issuance of a right-of-way permit for the use and occupancy of lands and waters under the administration of the National Park Service. The charge for use and occupancy of lands and waters authorized by a right-of-way permit issued under this part will be the fair market value of the right-of-way as determined by the Authorized Officer using sound business management principles, including but not limited to an appraisal.

(b) Periodic or lump-sum payments may be required at the discretion of the Authorized Officer and as indicated in the terms and conditions of the permit.

(c) Upon the relinquishment or termination of a permit before the expiration of its term, annual fees must continue to be made under this section until completion of equipment removal and rehabilitation of the right-of-way pursuant to subpart B of this part.

(d) The charge for use and occupancy of lands and waters under the regulations of this part will not be less than $100.00 per year for any right-of-way permit issued.

(e) If a charge required by this section is not paid when due, and such default will continue for 60 days after notice, the Authorized Officer may cancel the permit. Upon cancellation, any structures or personal property remaining on the right-of-way will be considered abandoned and be disposed of according to § 14.26, unless written permission to remove has been granted by the Authorized Officer.

(f) At any time not less than five years after either the issuance of the permit or the last revision of charges thereunder, the Authorized Officer, after reasonable notice to the permittee, may review such existing charges and impose such new charges determined pursuant to paragraph (a) of this section, commencing with the following charge year.

Subpart E—Highway Easements Deeds

§ 14.50 Rights-of-way for highway purposes.

(a) Whenever a State highway department requests a right-of-way from the Secretary of Transportation for purposes of a highway that is part of the Federal aid primary or Federal aid secondary system, or is part of the National System of Interstate or Defense Highways, pursuant to Title 23, United States Code, over lands or interests in lands under the jurisdiction of the National Park Service, the Secretary of Transportation, acting under the provisions of 23 U.S.C. 138, must first determine that:

(1) There is no feasible and prudent alternative to the use of such land; and

(2) Such a program includes all possible planning to minimize adverse impacts to National Park Service lands and resources resulting from such use.

(b) Should the Secretary of Transportation, in consultation with the Secretary of the Interior, determine that there is no feasible and prudent alternative to the use, and that either no adverse impacts will occur, or such adverse impacts that might occur will be mitigated to the satisfaction of the National Park Service, then the Secretary of Transportation, acting pursuant to 23 U.S.C. 317(b), may file notice with the Secretary of the Interior. The Secretary of the Interior then has four months to review and certify to the Federal Highway Administration approval of such transfer of land and, if the request is approved, establish such conditions as determined necessary to protect the park area.

(c) If both the Secretary of Transportation and the Secretary of the Interior approve the request, the Secretary of Transportation will then arrange to convey to the State highway department, adequate rights-of-way and control of access thereto. Such right-of-way interest will be conveyed through a highway easement deed containing terms and conditions satisfactory to the Secretary of the Interior for the protection of park values and resources and in accordance to the purposes for which the park area was established.

§ 14.51 Additional uses within highway rights-of-way.

(a) Separate application by the State highway department or any other applicant must be made to the Authorized Officer to obtain authorization to use the park area for other purposes within such highway right-of-way. An applicant for an additional right-of-way permit must first obtain a written statement from the

State highway department indicating its approval and any stipulations it considers desirable for the additional right-of-way.

(b) Future relocation or change of the additional right-of-way made necessary by the State highway use will be accomplished at the expense of the additional right-of-way permittee.

§ 14.52 Termination of highway use

(a) If at any time the need for any such lands or materials for highway purposes pursuant to a highway easement deed will no longer exist, notice of the fact will be given by the State highway department to the Secretary of Transportation and such lands or materials will revert to the control of the Secretary of the Interior.

(b) Upon receipt of such notice, the Secretary of Transportation will immediately notify the Secretary of the Interior and take steps as necessary to revoke and abandon the highway easement deed and revest the Secretary of the Interior with clear and exclusive title of unencumbered land.

Dated: November 13, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Note: This document was received at the Office of the **Federal Register** on November 24, 1997.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 96–6 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment additional settlement proposals for the adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license and proposed regulations for implementing these rates.

DATES: Comments and Notices of Intent to Participate are due by December 29, 1997. If comments and Notices of Intent to Participate are not received by this date, the proposed terms and rates shall become effective on January 1, 1998.

ADDRESSES: If sent by mail, an original and five copies of comments, and Notices of Intent to Participate, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of comments, and Notices of Intent to Participate, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five year intervals. 17 U.S.C. 118(c). The last adjustment of the terms and rates for the section 118 license occurred in 1992, making 1997 a window year for the adjustment of these terms and rates. 57 FR 60954 (December 22, 1992).

Section 118(b) provides that any copyright owner and any public broadcasting entity may negotiate the rates and terms for the compulsory license, or in the absence of a negotiated license,

> The Librarian of Congress shall, pursuant to Chapter 8, convene a copyright arbitration royalty panel to determine and publish in the **Federal Register** a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress * * *

Interested parties who submit proposals for adjusting the terms and rates for the section 118 license directly to the Librarian of Congress may petition the Librarian to submit these proposals to a public notice and comment proceeding, whereby copyright owners and users that would be affected by the proposals are given the opportunity to challenge them. 37 CFR 251.63. Any party who objects to the proposed terms and rates must submit, in turn, its challenges by a date certain, and must be entitled to participate in the CARP proceeding adjusting the section 118 terms and rates. If no challenges are received, or if challenges are received by an interested party who will not participate in a CARP proceeding, the Librarian may adopt the terms and rates of the proposals.

Accordingly, interested copyright owners and users of these works may file either a voluntary agreement or a joint proposal outlining the adjustments to the terms and rates for the section 118 license; or in the case of unaffiliated copyright owners,[1] the users may submit their proposals for the adjustment of the terms and rates of the section 118 license directly to the Librarian of Congress. See 62 FR 51619 (October 2, 1997). A joint proposal differs significantly from a voluntary settlement. The parties to a voluntary agreement represent all persons who would be affected by the agreement and the parties have the authority to bind their members. In a joint proposal, the parties to the agreement do not represent all persons who would be affected by the agreement, or if they do, at least one of the parties does not have the authority to bind its members.

II. This Proceeding

A. The Interested Parties

Seven parties filed notices of intent to participate with the Copyright Office in a proceeding to adjust the terms and rates of the section 118 license. Two additional parties, The American Council on Education and The National Federation of Community Broadcasters, participated in the negotiations of the joint proposals which certain parties filed with the Office on October 1, 1997. The following parties represent users of copyrighted works in this proceeding:

Public Broadcasting Services (PBS)—a non-profit membership corporation which, among other things, represents the interests of its member noncommercial, educational broadcasting stations in rate setting and royalty distribution proceedings in the United States, Canada, and in Europe.

National Public Radio (NPR)—a non-profit membership organization dedicated to the development of a

[1] An unaffiliated copyright owner is one whose interests are not represented by a performing rights society, or by any other organization participating in the proceeding.

diverse noncommercial educational radio programming service.

National Religious Broadcasters Music License Committee (NRBMLC)—an organization that represents noncommercial educational radio broadcasters that are associated as members of National Religious Broadcasters.

The American Council on Education (ACE)—an association representing over 1,500 colleges, universities and associations in higher education, some of which operate noncommercial educational radio broadcast stations.

The National Federation of Community Broadcasters (NFCB)—a national membership organization representing over 85 independent, community based noncommercial radio broadcasters.

The following parties represent the owners of the copyrighted works:

American Society of Composers, Authors and Publishers (ASCAP)—a performing rights society which, among other things, licenses on a non-exclusive basis the right of nondramatic public performance of its members' copyrighted musical compositions.

Broadcast Music, Inc. (BMI)—a performing rights society which, among other things, licenses the non-exclusive right to perform publicly the copyrighted musical compositions of its writers and publisher affiliates.

SESAC, Inc.—a performing rights society which, among other things, licenses the non-exclusive right to perform publicly the copyrighted musical compositions of its writers and publisher affiliates.

National Music Publishers Association, Inc. (NMPA) and The Harry Fox Agency, Inc. (HFA)—NMPA is an organization representing the interests of over 600 commercially active American music publishers, and the HFA is a wholly owned subsidiary which acts as a licensing agent for over 17,000 publishers.

B. Chronology

On October 18, 1996, the Library published a notice in the **Federal Register** requesting comments from interested parties as to the need for a CARP proceeding to adjust the section 118 terms and rates. 61 FR 54459 (October 18, 1996). The notice also announced the dates of the voluntary negotiation period, a precontroversy discovery schedule, and an initiation date for a CARP. At the request of the parties, the Library vacated the schedule and instructed the parties to appear at the Library on May 1, 1997, to inform the Office of the progress of their settlement negotiations.

The parties appeared at the May 1 status conference and requested additional time. The Office granted this request, but scheduled another status meeting in order to monitor the progress of the negotiations. The staff from the Copyright Office met with the parties again on July 24, 1997, at which time the parties identified the need for a CARP proceeding. Subsequently, the Library announced a second schedule setting dates for the precontroversy discovery period and for convening the CARP. Order in Docket No. 96–4 CARP NCBRA (July 30, 1997).

In accordance with the precontroversy schedule, on September 2, 1997, the Copyright Office received proposed rates and terms for the payment of royalty fees to ''unaffiliated copyright owners,'' from the National Religious Broadcasters Music License Committee (NRBMLC), the Public Broadcasting Service, and the National Public Radio. Because the identity of such copyright owners is not known, copyright users are unable to negotiate with them to reach private agreements, and their interests would not be represented if the matter were submitted to a CARP. Accordingly, on October 2, 1997, the Copyright Office published the proposed terms and rates for public comment. 62 FR 51619 (Oct. 2, 1997). The notice elicited no comments opposing the proposed rates for the ''unaffiliated copyright owners.''

Regulatory language implementing these proposals has been included in this document. Although further comment on the substance of these regulations is precluded, parties may file comments with the Copyright Office concerning the implementation of the proposals in the regulatory language.

Negotiations continued throughout the precontroversy settlement period. As a result, on October 1, 1997, certain parties filed notices of settlement and joint proposals for further adjusting the rates for the payment of the noncommercial compulsory license royalties, pursuant to 17 U.S.C. 118.

1. Notices of Settlement

SESAC, Inc., on behalf of its affiliated songwriters and music publishers, and the National Public Radio (NPR) and the Public Broadcasting Service (PBS), on behalf of the noncommercial educational broadcast stations they represent, reached an agreement on the rates and terms of a voluntary license between them covering the period January 1, 1998, through December 31, 2002. The Harry Fox Agency, Inc. (HFA), on behalf of its affiliated music publishers and other copyright proprietors, and NPR/PBS, on behalf of the noncommercial broadcast stations they represent in this proceeding, also reached an agreement between them covering the same period, January 1, 1998, through December 31, 2002.

These license agreements will be given effect in lieu of any determination by the Librarian of Congress, provided that the copies of the license agreements are filed with the Copyright Office within thirty days of the execution thereof. See 17 U.S.C. 118(b)(2). Accordingly, with respect to the use by PBS and NPR of musical compositions found in the SESAC repertory, or the use by PBS and NPR of copyrighted works whose owners are represented by The Harry Fox Agency, no regulations will be proposed.

2. Uncontested Proposal

The National Religious Broadcasters Music License Committee (NRBMLC) submitted an uncontested proposal as its direct case for adjusting the current rates and terms for the recording of nondramatic musical works by noncommercial radio stations ''other than in an NPR produced radio program.'' See 37 CFR 253.7(b)(4). The NRBMLC proposes that no adjustment be made to the rates and terms, which were in effect for the previous cycle. NRBMLC contends that the current rates and terms are ''reasonable and that no circumstances exist that would warrant modification of these rates.'' On November 18, 1997, NRBMLC filed an amendment to its proposal adopting the same rates for this provision that apply to the works of an ''unaffiliated copyright owner'' similarly situated. See 62 FR 51619 (October 2, 1997).

3. Joint Proposals

a. Performances of Musical Works by Public Broadcasting Entities Licensed to Colleges and Universities Not Affiliated with NPR. SESAC and ACE have submitted a joint proposal which would increase the rate which applies to public broadcasting entities licensed to colleges and universities not affiliated with NPR to $60 for 1998, subject to an annual cost of living adjustment thereafter. See 37 CFR 253.5(c)(3). ASCAP and ACE also submitted a joint proposal to the Librarian which proposes maintaining the current rate for college radio stations not affiliated with NPR, with an annual cost of living adjustment. See 37 CFR 253.5(c)(1). In addition, BMI, in its direct case, proposed ''continuing its fee with respect to college and university radio stations not affiliated with NPR, subject to an annual cost of living adjustment permitted under 37 CFR 253.10 (1996).''

Direct Case of BMI at 2. See 37 CFR 253.5(c)(2).

Both ASCAP and BMI propose that the 1998 rates consist of the current rate with an annual cost of living increase, based upon the annual change in the Consumer Price Index (CPI)—the methodology adopted by the former Copyright Royalty Tribunal in the 1987 rate adjustment proceeding and maintained in the 1992 rate adjustment proceeding. 52 FR 49010 (December 29, 1987) and 57 FR 60954 (December 22, 1992). Assuming no party challenges the ASCAP and BMI proposals, new rates for ASCAP and BMI will be calculated based upon the change in the CPI, during the period between the first CPI subsequent to December 1, 1996, and the last CPI published prior to December 1, 1997. These rates will be published at the time the final rules are published in the **Federal Register**. No similar adjustment is necessary for the rate jointly proposed by SESAC and ACE, since their proposed rate already reflects an upward adjustment for the coming year. In each subsequent year covered by the terms of these proposals, an annual cost of living adjustment will be made to the royalty rate for performing the musical compositions in the ASCAP, BMI, and SESAC repertory.

The parties to these joint proposals submit that the proposed annual compulsory license fees are made on a nonprejudicial and nonprecedential basis. As the Copyright Royalty Tribunal did in the 1987 rate adjustment proceeding, and again in the 1992 rate adjustment proceeding, the Librarian recognizes that the joint proposals do not reflect any assessment by any of the parties of the absolute or relative value of the right of performance of music in the ASCAP, BMI, or SESAC repertory by college radio stations.

b. Performances of Musical Compositions by Public Broadcasting Stations Other Than NPR or College Stations. Joint proposals were submitted to adjust the rates which apply to public broadcasting radio stations which are not licensed to colleges and universities and which are not affiliated with NPR. SESAC, BMI, and ASCAP, each submitted separate joint proposals with the National Religious Broadcasters Music License Committee (NRBMLC) and the National Federation of Community Broadcasters (NFCB). The proposals continue the general trend of annual adjustments reflected in the current regulations, 37 CFR 253.6(c)(1)(2)(3), and have been made on a nonprejudicial and nonprecedential basis.

Therefore, the Librarian recognizes that the joint proposals do not reflect any assessment by any of the parties of the absolute or relative value of the right of the performance of music in the ASCAP, BMI, or ASCAP repertory by community radio stations.

C. Comments and Notices of Intent To Participate

Any party who wishes to challenge the proposed rates must submit its written comments to the Librarian of Congress no later than close of business on December 31, 1997. The content of the written challenge should describe the party's interest in this proceeding, the proposed rule that the party finds objectionable, and the reasons for the challenge.

In addition, any party submitting written challenges must also submit an accompanying Notice of Intent to Participate. Failure to submit a Notice of Intent to Participate will preclude an interested party from participating in this proceeding and will preclude consideration of his or her written challenge. Any interested party that does submit a Notice of Intent to Participate will be contacted by the Librarian as to when his or her written direct case is due. It is the intention of the Librarian to include such parties in the CARP proceeding that shall commence on December 31, 1997.

The following proposed rules includes regulatory language to implement the proposals filed with the Library of Congress on September 2, 1997, and published in the **Federal Register** on October 2, 1997, for public comment pursuant to 37 CFR 251.63. The Copyright Office invites public comment on the proposed regulatory language implementing the earlier proposals, in addition to, the proposals discussed above. If no comments or Notices of Intent to Participate are received by close of business on the date for filing such comments, the proposed rates and terms shall become effective on January 1, 1998.

List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television.

For the reasons set forth in the preamble, the Library proposes to amend 37 CFR part 253 as follows:

PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN CONNECTION WITH NONCOMMERCIAL EDUCATIONAL BROADCASTING

1. The authority citation for part 253 continues to read as follows:

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

2. Section 253.1 is revised to read as follows:

§ 253.1 General.

This part 253 establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 1998, and ending on December 31, 2002. Upon compliance with 17 U.S.C. 118, and terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(d).

3. Section 253.4 is amended by revising the introductory text, paragraph (a)(1) through (a)(8), and paragraph (c) to read as follows:

§ 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 253.5 and 253.6, and except for compositions which are the subject of voluntary license agreements, or compositions in the repertories of ASCAP, BMI or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.

(a) *Determination of royalty rates.* (1) For the performance of such a work in a feature presentation of PBS:

1998–2002 .....$211.53

(2) For the performance of such a work as background or theme music in a PBS program:

1998–2002 .....$53.59

(3) For the performance of such a work in a feature presentation of a station of PBS:

1998–2002 .....$18.08

(4) For the performance of such a work as background or theme music in a program of a station of PBS:

1998–2002 .....$3.81

(5) For the performance of such a work in a feature presentation of NPR:

1998–2002 .....$21.44

(6) For the performance of such a work as background or theme music in an NPR program:

1998–2002 .....$5.20

(7) For the performance of such a work in a feature presentation of a station of NPR:

1998–2002 ..... $1.52

(8) For the performance of such work as background or theme music in a program of a station of NPR:

1998–2002 ..... $.54

* * * * *

(c) *Records of use.* PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP or BMI covering the license period January 1, 1998, to December 31, 2002, to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

* * * * *

4. In § 253.5, paragraph (c)(3) is revised to read as follows:

§ 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(3) For all such compositions in the repertory of SESAC, $60 annually.

* * * * *

5. In § 253.6, paragraph (c) is revised to read as follows:

§ 253.6 Performance of musical compositions by other public broadcasting entities.

* * * * *

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, in 1998, $375; in 1999, $390; in 2000, $405; in 2001, $420; in 2002, $440.

(2) For all such compositions in the repertory of BMI, in 1998, $375; in 1999, $390; in 2000, $405; in 2001, $420; in 2002, $440.

(3) For all such compositions in the repertory of SESAC, in 1998, $78; in 1999, $82; in 2000, $86; in 2001, $89; in 2002, $92.

(4) For the performance of any other such compositions, in 1998 through 2002, $1.

* * * * *

6. Section 253.7 is amended by revising paragraphs (a), (b)(1) (i) and (ii), and (b)(2), (4), and (5) to read as follows:

§ 253.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in 37 CFR subchapter B, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	1998–2002
Feature	$106.04
Concert feature (per minute)	31.84
Background	53.59
Theme:	
Single program or first series program	53.59
Other series program	21.75

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	1998–2002
Feature	$8.76
Concert feature (per minute)	2.30
Background	3.81
Theme:	
Single program or first series program	3.81
Other series program	1.52

* * * * *

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule ''National Public Radio'' programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	1998–2002
Feature	$11.48
Concert feature (per half hour)	16.85
Background	5.75
Theme:	
Single program or first series program	5.75
Other series program	2.29

(3) * * *

(4) For such uses other than in a NPR-produced radio program:

	1998–2002
Feature	$.74
Feature (concert)(per half	1.54
Background	.37

(5) The schedule of fees covers broadcast use for a period of three years following the first broadcast. Succeeding broadcast use periods will require the following additional payment: second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2002 shall be subject to the royalty rates established in this schedule.

* * * * *

7. In § 253.8, paragraphs (b)(1) and (f)(1) are revised as follows:

§ 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

* * * * *

(b) *Royalty rate.* (1) The following schedule of rates shall apply to the use of works within the scope of this section:

(i) For such uses in a PBS-distributed program:

(A) For a featured display of a work.

1998–2002 .....$64.78

(B) For background and montage display.

1998–2002 .....$31.59

(C) For use of a work for program identification or for thematic use.

1998–2002 .....$127.71

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule.

1998–2002 .....$41.95

(ii) For such uses in other than PBS-distributed programs:

(A) For featured display of a work.

1998–2002 .....$41.95

(B) For background and montage display.

1998–2002 .....$21.51

(C) For use of a work for program identification or for thematic use.

1998–2002 .....$85.76

(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced, irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.

1998–2002 .....$21.51

* * * * *

(f) *Terms of use.* (1) The rates of this schedule are for unlimited broadcast use for a period of three years from the date of the first broadcast use of the work under this schedule. Succeeding broadcast use periods will require the following additional payment: Second three-year period—50 percent; each three-year period thereafter—25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 2002, shall be subject to the rates established in this schedule.

* * * * *

9. In § 253.10, paragraph (a) is revised to read as follows:

§ 253.10 Cost of living adjustment.

(a) On December 1, 1998, the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 1997, to the most recent Index published prior to December 1, 1998. On each December 1, thereafter the Librarian of Congress shall publish a notice of change in the cost of living during the period from the most recent Index published prior to the previous notice, to the most recent Index published prior to December 1 of that year.

* * * * *

Dated: November 18, 1997.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–31295 Filed 11–26–97; 9:39 am]

BILLING CODE 1410–33–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96–4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment a joint petition concerning the adjustment of the physical phonorecord and digital phonorecord delivery royalty rates and proposed regulations implementing these rates.

DATES: Comments and notices of intent to participate are due by December 29, 1997. If comments and Notices of Intent to Participate are not received by this date, the proposed terms and rates shall become effective on January 1, 1998.

ADDRESSES: If sent by mail, an original and five copies of comments, and Notices of Intent to Participate, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of comments, and Notices of Intent to Participate, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel; William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

How Were the Current Royalty Rates and Terms Established for the Making and Distribution of a Physical Phonorecord and a Digital Phonorecord Delivery?

The mechanical compulsory license, 17 U.S.C. 115, requires a copyright owner of a nondramatic musical work to grant a license to any person who wants to make and distribute phonorecords of that work, provided that the copyright owner has allowed phonorecords of the work to be produced and distributed, and that the licensee pays the statutory rate. Until its demise in 1993, the Copyright Royalty Tribunal had authority to adjust the statutory rates for the making and distribution of physical phonorecords, and did so in 1987, *see* 52 FR 22637 (June 15, 1987), setting the rates and terms for the mechanical compulsory license for at least the next ten years.

The Copyright Act provides that, during the tenth calendar year, any copyright owner or user whose royalty rates are specified by the statutory license may file a petition requesting an adjustment to the rates and terms. 17 U.S.C. 803(a) (1) and (3). This ten-year cycle makes 1997 a window year for commencing a proceeding to further adjust the mechanical phonorecord compulsory license royalty rates.

On November 1, 1995, Congress passed the Digital Performance Right in Sound Recording Act of 1995 (Digital Performance Act), Pub. L. 104–39, 109 Stat. 336, which extended the mechanical license to digital phonorecord deliveries. Congress passed this Act to maintain and reaffirm the mechanical rights of songwriters and music publishers in an era of emerging technology which makes delivery of digital phonorecords possible. Among other things, the Digital Performance Act confirms and clarifies that the scope of the compulsory license to make and distribute phonorecords of nondramatic musical compositions includes digital transmissions which constitute ''digital phonorecord deliveries.'' 17 U.S.C. 115(c)(3).

The Digitial Performance Act sets the royalty rate for all digital phonorecord deliveries made or authorized under the section 115 compulsory license on or before December 31, 1997, at the current

rate for the making and distribution of physical phonorecords: 6.95 cents for each work embodied in a phonorecord, or 1.3 cents per minute of playing time, or fraction thereof, whichever amount is larger. 37 CFR 255.5.

When Does the Current Digital Phonorecord Delivery Royalty Rate Expire and How is a New Rate Set?

The rate for the digital phonorecord deliveries expires on December 31, 1997. Accordingly, in the Digital Performance Act, Congress established a two-step process for adjusting the royalty rate, a negotiation period wherein the owners and the users attempt to reach their own voluntary licenses, and then if necessary, and upon the filing of a petition in 1997, the convening of a copyright arbitration royalty panel (CARP) to establish rates and terms for those persons who are not covered by voluntary licenses. 17 U.S.C. 115(c)(3)(C) and (D).

If interested parties reach a negotiated settlement, they may submit their proposals for adjusting the rates and terms for digital phonorecord deliveries directly to the Librarian of Congress. 37 CFR 251.63. This rule further provides that:

> The Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.

37 CFR 251.63. This procedure applies to the adjustment of the compulsory license rates concerning both digital phonorecord and physical phonorecord deliveries.

Chronology—Current Rate Adjustment Proceeding

On July 17, 1996, the Copyright Office published a notice designating July 17, 1996, to December 31, 1996, as the period for the copyright owners and users to negotiate reasonable terms and rates for the delivery of a digital phonorecord. 61 FR 37312 (July 17, 1996). The notice also established a schedule for convening a CARP which would have established new rates for digital phonorecord deliveries before the current rate expired. In addition, the Office noted that 1997 was a window year for adjusting the royalty rates concerning the making and distribution of physical phonorecords, and requested comment from interested parties on the possibility of conducting a single CARP proceeding to adjust both the physical phonorecord and the digital phonorecord delivery rates, even though the physical phonorecord rates would not expire on December 31, 1997. 61 FR 37215.

According to the interested parties,[1] however, the proposed schedule did not allot sufficient time for negotiating a comprehensive joint proposal. Therefore, they filed a motion with the Office on November 8, 1996, requesting that the Office vacate the proposed schedule to allow them more time to continue their negotiations. The Office granted the moving Parties' motion and rescheduled the proceeding. 61 FR 65243 (December 11, 1996).

Although the new schedule extended the negotiation period by three months, the Parties thought the time still insufficient for conducting the necessary negotiations, and so, requested a meeting with the Office to discuss the difficulties associated with negotiating rates and terms for use of a new technology in a marketplace with little definition or clear direction. The Office granted their request and met with the Parties on January 9, 1997. At that meeting, the Parties again requested more time for conducting the negotiations on setting the rates and terms for the section 115 license, having acknowledged the need to establish the mechanical rate before they attempted to negotiate the rates for the digital delivery of phonorecords. After considering the difficulties confronting the Parties, the Office agreed to vacate the schedule. 62 FR 5057 (February 3, 1997).

The additional time for further negotiations proved to be beneficial, and on November 7, 1997, the National Music Publishers' Association, Inc. (NMPA), The Songwriters Guild of America (SGA), and the Recording Industry Association of America (RIAA) filed a joint petition with the Copyright Office outlining a proposal to adjust the physical phonorecord and digital phonorecord delivery royalty rates. NMPA, SGA, and RIAA, the organizations that represent the interests of copyright owners and copyright users in the current proceeding, were also the principal participants representing these interests in the 1980 and the 1987 mechanical rate adjustment proceedings. 46 FR 55276 (November 9, 1981) and 52 FR 22637 (June 15, 1987).

The Parties to the joint petition, having duly filed a proposal concerning the 1997 physical phonorecord and digital phonorecord delivery royalty rate adjustments, asked the Copyright Office to submit their proposal to a notice and comment proceeding to promulgate regulations to adjust the proposed rates and terms. Accordingly, pursuant to 17 U.S.C. 803(c) and 37 CFR 251.63(b), the Copyright Office invites public comment on the proposed rates and terms for adjusting the physical phonorecord and digital phonorecord delivery royalty rates, and on the regulatory language implementing the proposal.

Comments and Notices of Intent to Participate

Any party who wishes to challenge the proposed rates and terms must submit his or her written comments to the Librarian of Congress no later than close of business on December 31, 1997. The content of the written challenge should describe the party's interest in this proceeding, the proposed rule that the party finds objectionable, and the reasons for the challenge.

In addition, any party submitting written challenges must also submit an accompanying Notice of Intent to Participate. Failure to submit a Notice of Intent to Participate will preclude the interested party from participating in a CARP proceeding to adjust the rates and terms, and will preclude consideration of his or her challenge. If no comments or Notices of Intent to Participate are received by close of business on the date for filing such comments, the proposed terms and rates shall become effective on January 1, 1998.

List of Subjects in 37 CFR Part 255

Copyright, Recordings.

For the reasons set forth in the preamble, the Library proposes to amend 37 CFR part 255 as follows:

PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS

1. The authority citation for part 255 continues to read as follows:

Authority: 17 U.S.C. 801(b)(1) and 803.

2. In § 255.3(a), the phrase ''(b), (c), (d), (e), (f), (g), and (h)'' is removed and the phrase ''(b) through (m)'' is added after the word ''paragraphs''.

3. In § 255.3(b), the phrase ''(c), (d), (e), (f), (g), and (h)'' is removed and the phrase ''(c) through (m)'' is added after the word ''paragraphs''.

4. In § 255.3(c), the phrase ''(d), (e), (f), (g), and (h)'' is removed and the phrase ''(d) through (m)'' is added after the word ''paragraphs''.

5. In § 255.3(d), the phrase ''(e), (f), (g), and (h)'' is removed and the phrase

[1] The interested parties are the Recording Industry Association of America, the National Music Publishers' Association, Inc., and The Harry Fox Agency, Inc. (collectively, ''the Parties'').

''(e) through (m)'' is added after the word ''paragraphs''.

6. In § 255.3(e), the phrase ''(f), (g), and (h)'' is removed and the phrase ''(f) through (m)'' is added after the word ''paragraphs''.

7. In § 255.3(f), the phrase ''(g), and (h)'' is removed and the phrase ''(g) through (m)'' is added after the word ''paragraphs''.

8. In § 255.3(g), the phrase ''paragraph (h)'' is removed and the phrase ''paragraphs (h) through (m)'' is added after the phrase ''pursuant to''.

9. In § 255.3(h), the phrase '', subject to further adjustment pursuant to paragraphs (i) through (m) of this section'' is added after the word ''larger''.

10. Add new paragraphs (i), (j), (k), (l), and (m) to § 255.3 to read as follows:

§ 255.3 Adjustment of royalty rate.

* * * * *

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (l) through (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

11. Revise § 255.5 to read as follows:

§ 255.5 Royalty rate for digital phonorecord deliveries in general.

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) Except as provided in § 255.6, for every digital phonorecord delivery made on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in § 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the ''Physical Rate''). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

12. Add § 255.6 to read as follows:

§ 255.6 Royalty rate for incidental digital phonorecord deliveries.

(a) Except as provided in paragraphs (b) and (c) of this section, for every digital phonorecord delivery made on or after January 1, 1998, where the reproduction or distribution of the phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery (an ''Incidental DPD''), the royalty rate payable with respect to each work embodied in the phonorecord shall be the Physical Rate. In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the characterization of a digital phonorecord delivery as ''incidental'' and the royalty rates payable for a compulsory license for Incidental DPDs shall be established de novo, and no precedential effect shall be given to the characterization of a digital phonorecord delivery as ''incidental'' under this section or to the royalty rate payable under this section for any period prior to the period as to which the characterization of a digital phonorecord delivery as ''incidental'' or the royalty rates are to be established in such future proceeding.

(b) No royalty shall be payable for any ''Transient Phonorecord'' made in the course of any digital phonorecord delivery made on or after January 1, 1998: provided that a royalty shall be payable with respect to each work embodied in the phonorecord ultimately reproduced by or for the ultimate transmission recipient of such digital phonorecord delivery at the royalty rate prescribed under § 255.5 or the other paragraphs of this section, as applicable. Nothing in this paragraph shall limit or impair any rights or remedies of the copyright owner of a work against any person who makes reproductions from a Transient Phonorecord for any purpose other than to facilitate the transmission to the ultimate transmission recipient. For the purpose of this paragraph, a ''Transient Phonorecord'' is a transient phonorecord reproduced in temporary computer memory or digital storage intermediate to the communications system through which a digital phonorecord delivery is made, where such transient phonorecord is made in the ordinary operation of such system solely to facilitate the transmission to the ultimate transmission recipient. An example of a Transient Phonorecord is a phonorecord reproduced temporarily in a router intermediate to the Internet.

(c)(1) For every digital phonorecord delivery made on or after January 1, 1998, no royalty shall be payable where:

(i) The reproduction or distribution of the phonorecord is incidental to the promotion of a sound recording embodying a work,

(ii) The phonorecord is of no more than 30 seconds of playing time of the sound recording of such work, or in the case of sound recordings of a work with a playing time of more than 5 minutes, the phonorecord is of no more than the lesser of 10% or 60 seconds of playing time of the sound recording of such work, and

(iii) The digital phonorecord delivery is made or authorized by the copyright owner of such sound recording.

(2) The copyright owner of any work embodied in a sound recording may, without payment of any royalty to the copyright owner of the sound recording, make or authorize a digital phonorecord delivery where:

(i) The reproduction or distribution of the phonorecord is incidental to the promotion of the work embodied in the sound recording,

(ii) The phonorecord is of no more than 30 seconds of playing time of the sound recording of such work, or in the case of sound recordings of a work with a playing time of more than 5 minutes, the phonorecord is of no more than the lesser of 10% or 60 seconds of playing time of the sound recording of such work, and

(iii) The digital phonorecord delivery is made by the copyright owner of such work, either individually or collectively with other copyright owners of such works, or by an organization of copyright owners designated by such copyright owners as their common agent.

13. Add § 255.7 to read as follows:

§ 255.7 Future proceedings.

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1998 and every second year thereafter until 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2000, 2002, 2004, 2006 and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 1999 and every second year thereafter until 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2000, 2002, 2004, 2006 and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the provisions of this section, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

Dated: November 18, 1997.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–31293 Filed 11–26–97; 9:39 am]

BILLING CODE 1410–33–P

Notices

Federal Register

Vol. 62, No. 230

Monday, December 1, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Water & Oil Technologies, Inc., of Montgomery, Illinois, an exclusive license to U.S. Patent 4,871,556, issued 10/03/89, entitled ''Inhibition of Warmed-Over Flavor and Preserving of Uncured Meat Containing Materials.'' Notice of Availability was published in the **Federal Register** on September 22, 1988.

DATES: (**Federal Register**) Comments must be received on or before January 30, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Water & Oil Technologies, Inc., has submitted a complete and sufficient application for a license. The prospective license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 97–31383 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–105–1]

Availability of Horse Protection Strategic Plan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of the availability of the Animal and Plant Health Inspection Service Horse Protection Strategic Plan.

ADDRESSES: Copies of the Animal and Plant Health Inspection Service Horse Protection Strategic Plan are available and may be obtained either by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or electronically at http://www.aphis.usda.gov/ac. A copy of the strategic plan is also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect this document are requested to call the reading room in advance at (202) 690–2817.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Watkins, Initiatives Coordinator, USDA, APHIS, Animal Care, 4700 River Road, Unit 84, Riverdale, MD 20737–1234, (301) 734–4981.

SUPPLEMENTARY INFORMATION: The practice known as ''soring'' is the causing of pain in Tennessee Walking Horses and other gaited horses, in order to affect their performance. The Horse Protection Act (HPA) (11 U.S.C. *et seq.*) was enacted for the purpose of eliminating soring by prohibiting the showing, exhibition, transport or sale of sore horses. Exercising its rulemaking and enforcement authority under the HPA, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations regarding horse protection at title 9, chapter I, part 11, of the Code of Federal Regulations.

In 1995, APHIS initiated development of a Horse Protection Strategic Plan, designed to achieve the elimination of soring by strengthening APHIS's relationship with the walking horse industry. APHIS drafted a preliminary Strategic Plan, then convened three public meetings in 1996 to gather comments regarding the plan. The meetings were open forums attended by APHIS personnel, horse industry organization representatives, animal interest groups, and other individuals. APHIS considered all comments received at these forums, and revised its preliminary plan accordingly. We are giving notice that the final Horse Protection Strategic Plan is available to the public.

Done in Washington, DC, this 21st day of November, 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31353 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Swamp Timber Sales and Associated Activities; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of timber harvest (including salvage of beetle-killed lodgepole pine and windthrown trees), prescribed fire, watershed rehabilitation, year-round road restrictions, road obliteration, construction of temporary roads and reconstruction of specified roads in the Swamp Analysis Area on the Fortine Ranger District of the Kootenai National Forest. The Swamp Analysis Area is located approximately 30 air miles northeast of Libby, Montana, near the communities of Trego, Fortine and Eureka, Montana.

The proposed actions to harvest and reforest timber stands, improve stream

and watershed conditions, reconstruct, rehabilitate or obliterate roads, restrict road access and underburn forest fuels and debris are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purposes of the project are: (1) To manage for a diversity of plant communities and age classes to meet the specific habitat requirements for a variety of plant and animal species; (2) to provide timber to support local, regional, and national needs; and (3) to manage for stable stream channels, viable and productive habitats for aquatic species, and water quality that meets or exceeds State of Montana water quality goals.

The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September, 1987, which provides overall guidance for forest management of the area. All activities associated with the proposal will be designed to maintain high quality wildlife, fisheries, and watershed objectives.

DATES: Written comments and suggestions should be postmarked or received by December 31, 1997.

ADDRESSES: The Responsible Official is Edward C. Monnig, District Ranger, Fortine Ranger District, P.O. Box 116, Fortine, Montana, 59918. Written comments and suggestions concerning the scope of the analysis may be sent to him at that address.

FOR FURTHER INFORMATION CONTACT: Michael Liu, Project Leader, Fortine Ranger District. Phone: (406) 882–4451.

SUPPLEMENTARY INFORMATION: The Swamp Decision Area contains approximately 40,680 acres of land within the Kootenai National Forest in Lincoln County, Montana. All of the proposed projects would occur on National Forest lands in the Swamp, Beaver and Edna Creek drainages near Trego, Montana.

The legal location of the Swamp Decision Area is as follows: All or portions of Sections 1–3 and 11–12 of Township 32 North, Range 28 West; Sections 2–11 and 14–16 of Township 32 North, Range 27 West; Section 36 of Township 33 North, Range 28 West; Sections 1–4, 8–17, and 19–36 of Township 33 North, Range 27 West; Sections 1–11, 14–22, and 29–32 of Township 33 North, Range 26 West; Sections 24–26 and 34–36 of Township 34 North, Range 27 West; and Sections 17–36 of Township 34 North, Range 26 West; Principal Montana Meridian, Lincoln County, Montana.

All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals.

The Forest Service proposes to harvest approximately 36,600 hundred cubic feet (CCF), the equivalent of 15 million board feet (MMBF), of timber through application of a variety of harvest methods on approximately 4780 acres of forest land within the Swamp Decision Area. Use of existing and temporary roads would be needed to access timber harvest areas. An estimated 47 miles of existing roads would be reconstructed to access timber harvest areas or improve watershed conditions. An additional 13 miles of road would be rehabilitated to improve watershed conditions. All temporary roads would be obliterated following completion of sale activities. An additional 16 miles of road no longer in use, would be obliterated by various methods, such as removal of culverts, recontouring, ripping and seeding, and installing barriers. The method of obliteration would be based on site specific conditions. An estimated 24 miles of existing road would be restricted year-round to improve watershed conditions, minimize future road maintenance costs, and to regulate overall open road density to improve big game security. The proposal also includes prescribed burning on approximately 500 acres to enhance wildlife habitat, and promote vegetative diversity. Prescribed burning would also be used to reduce fuels and prepare sites for natural or artificial reforestation on regeneration harvest units after completion of harvest operation.

More specifically management activities in this proposal include:

Regeneration Harvest

These activities emphasize development of a new stand of trees through harvest of existing live or dead trees. The following types of regeneration harvest are proposed: (1) Salvage of merchantable dead lodgepole pine and other species would be removed in one entry, leaving 6–10 live trees/acre. Approximately 126 acres would be harvested resulting in approximately 2,440 CCF (1 MMBF) of timber; (2) Seedtree/shelterwood harvest of all merchantable trees except for 6–10 trees/acre in seed tree or 20–40 trees/acre in shelterwood prescriptions. Some shelterwood trees could be removed in a second entry when the stand has been certified as regenerated. A total of approximately 299 acres would be harvested resulting in approximately 7296 CCF (3 MMBF) of timber; (3) Using a group shelterwood prescription some units would be harvested in 3–5 acre openings. Three entries would take place over a 20 year period, removing one-third of the stand with each entry. Leave trees would be left in the openings. Approximately 574 acres would be harvested and yield approximately 4636 CCF (1.9 MMBF) of timber; (4) Special shelterwood harvests would remove all merchantable trees except for 20–25 large diameter (>18″DBH) larch and Douglas fir trees/acre. The remaining shelterwood trees would be left in the unit to provide stand structure. Approximately 259 acres would be harvested yielding approximately 4,880 CCF (2 MMBF) of timber.

Intermediate Harvest

These activities emphasize active management of existing trees by thinning the stand. The following types of intermediate harvest prescriptions are planned: (1) Blowdown salvage and lodgepole pine salvage would remove merchantable dead trees while protecting desirable live trees in the stand. Approximately 1550 acres would be harvested yielding approximately 7857 CCF (3.2 MMBF) of timber; (2) Commercial thinning of merchantable and less dominant trees in the stand would occur to meet desired stand stocking levels. The largest and healthiest trees would be left in the stands. Approximately 1964 acres would be harvested resulting in approximately 9590 CCF (3.9 MMBF) of timber; (3) Harvest of post and pole sized lodgepole pine from approximately 170 acres is proposed. Larger healthy lodgepole pine and other species would be left on roughly a 12 by 12 spacing. No volume has been estimated at this time.

Underburning

Underburning is proposed on approximately 500 acres to reduce fuel loads, and improve stands for wildlife. The prescription would involve burning stands during spring and early summer for good smoke dispersion and safe burning conditions.

Watershed Rehabilitation

A number of watershed rehabilitation projects are proposed in the Swamp Decision Area. These include: two stream channel enhancement projects, two riparian enhancement projects and three projects to control cattle access to streams.

Road Reconstruction and Rehabilitation

Approximately 47 miles of existing road would be reconstructed to access harvest areas or improve watershed conditions. Approximately 13 miles would be rehabilitated to improve watershed conditions and 16 miles would be obliterated because they are no longer in use. Obliteration would be accomplished through removal of culverts, recontouring, or ripping and seeding the road bed.

Year-round Road Restrictions

Approximately 24 miles of road would be temporarily restricted year-round. These restrictions would help to improve watershed conditions to minimize future road maintenance costs and to improve big game security by reducing overall open road densities.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The proposed projects encompass seven predominant MA's; 11, 12, 13, 15, 16, 21 and 24. Briefly described, MA 11 (4% of the area) is managed to maintain or enhance the winter range habitat effectiveness for big-game species and produce a programmed yield of timber. MA 12 (17% of the area) is designated to maintain or enhance big game summer range and produce a programmed yield of timber. MA 13 (9% of the area) is designated to provide special habitat necessary for old growth dependent wildlife. MA 15 (43% of the area) focuses upon timber production using various silvicultural practices while providing for other resource values such as soil, air, water, wildlife, recreation, and forage for domestic livestock. MA 16 (2% of the area) is managed to produce timber while providing for a pleasing view. MA 21 (1% of the area) is the designated as a special interest area and serves to provide protection or special management of unique, unusual, or important attributes (flora, fauna, geologic, etc.). MA 24 (4% of the area) is usually not productive ground and is managed to provide site protection and for any inherent wildlife resources. Timber harvest is proposed in MA's 11, 12, 15, 16 and 24.

This proposal includes openings greater than 40 acres to replicate historic disturbance patterns. If these large openings are included in the preferred alternative in the Draft EIS, a 60-day public review will be provided during the comment period on the Draft EIS. Approval of the Regional Forester for exceeding the 40-acre limitation for regeneration harvest would be required prior to the signing of the Record of Decision.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Preliminary Issues

The following preliminary issues have been identified for this proposal:

—*Road Management:* Specific roads would need to be restricted or obliterated to meet road densities for wildlife security and improve watershed conditions. Some individuals feel that these activities unfairly restrict public use and waste taxpayer dollars. Others feel restrictions are a benefit to wildlife and watershed conditions and should be implemented.

—*Timber Supply:* A continued supply of timber is a concern of both internal and external publics. The methods used to provide that supply as well as amount of timber harvested are components of this issue

—*Water Quality:* Road construction and reconstruction, cattle use, as well as timber harvest and prescribed burning are concerns of the public in relation to the issue of water quality.

Public Involvement and Scoping

On March 13, 1997 an advertisement was placed in the *Daily Inter Lake,* Kalispell, Montana, requesting public comment and information concerning the Swamp Analysis Area. In addition, on March 14, 1997 a letter was mailed to the approximately 216 individuals comprising the mailing list for the Swamp Analysis Area. Taking into account the comments received and information gathered during preliminary analysis, it was decided to prepare an EIS for the Swamp Timber Sales and Associated Activities. Comments received prior to this notice will be included in the documentation for the EIS.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft and Final EIS. Comments received on this proposal will be made part of the public record and may be included in the Draft and Final EIS. Names and addresses of commentors are subject to inquiries under the Freedom of Information Act and would be disclosed upon request. Comments on this proposal must be postmarked or received by December 31, 1997.

Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by June, 1998. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Final EIS is scheduled to be completed by August, 1998. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewers Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S.C. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the Draft EIS 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and

concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Edward C. Monnig, District Ranger, Fortine Ranger District, Kootenai National Forest, P.O. Box 116, Fortine, Montana, 59918, is the Responsible Official. As the Responsible Official, I will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: November 21, 1997.

Edward C. Monnig,

District Ranger, Fortine Ranger District.

[FR Doc. 97–31330 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, December 11, 1997, at the USDI Salem BLM Office; 1717 Fabry Rd SE; Salem, Oregon 97306; phone (503) 375–5642. The Advisory Committee meeting is scheduled for 9:00 a.m. to approximately 12:30 p.m. The tentative agenda includes: (1) Review of the Province timber sale monitoring results, (2) Review and critique of 1997 Willamette PAC activities and accomplishments, (3) Identifying and prioritizing topics for Willamette PAC meeting in 1998, and (4) Public forum.

This public forum is tentatively scheduled to begin at 10:00 a.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged. Written comments may be submitted prior to the meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: November 21, 1997.

Darrel L. Kenops,

Willamette Forest Supervisor.

[FR Doc. 97–31349 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity to Comment on the Applicants for the Little Rock Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA requests comments on the applicants for designation to provide official services in the geographic area formerly assigned to Arkansas Grain Inspection Service (Arkansas).

DATES: Comments must be postmarked, or sent by telecopier (FAX) by December 30, 1997.

ADDRESSES: Comments must be submitted in writing to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–690–2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 1, 1997, **Federal Register** (62 FR 51407), GIPSA asked persons interested in providing official services in the Little Rock area, formerly assigned to Arkansas, to submit an application for designation by October 30, 1997. There were two applicants: Memphis Grain Inspection Service, a currently designated official agency, located at Memphis, Tennessee, and contiguous to the Little Rock area, applied for designation to provide official services in the Little Rock area; and the former Arkansas agency reorganized and applied for designation to provide official services in the Little Rock area.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of the applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

Effective November 1, 1997, until an official agency can be selected, requests for official services should be directed to GIPSA's Stuttgart, Arkansas, Field Office at 501–673–2508.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–31335 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Champaign (IL) and Enid (OK) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of Champaign-Danville Grain Inspection Departments, Inc. (Champaign), will end May 31, 1998, and the designation of Enid Grain Inspection Company, Inc. (Enid), will end June 30, 1998, according to the Act. GIPSA is asking persons interested in providing official services in the Champaign and Enid areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before December 30, 1997.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Champaign, main office located in Champaign, Illinois, to provide official inspection services under the Act on June 1, 1995, and Enid, main office located in Enid, Oklahoma, to provide official inspection services under the Act on July 1, 1995.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Champaign ends on May 31, 1998, according to the Act. The designation of Enid ends on June 30, 1998, according to the Act.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Indiana, is assigned to Champaign.

Bounded on the North by the northern Livingston County line from State Route 47; the eastern Livingston County line to the northern Ford County line; the northern Ford and Iroquois County lines east to the Illinois-Indiana State line; the Illinois-Indiana State line south to U.S. Route 24; U.S. Route 24 east to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the northern Parke County line; the northern Parke and Putnam County lines; the eastern Putnam, Owen and Greene County lines;

Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41 (150); U.S. Route 41 (150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the Western Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the Southern Coles County line; the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line, from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with State Route 116; State Route 116 east to State Route 47; State Route 47 north to the northern Livingston County line.

The following grain elevators, all in Illinois, located outside of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor Grain Company, McLain County F/S, and Pacific Grain Company, all in Farmer City, Dewitt County; and Monticello Grain Company, Monticello, Piatt County (located inside Decatur Grain Inspection, Inc.'s, area).

Champaign's assigned geographic area does not include the following grain elevators inside Champaign's area which have been and will continue to be serviced by the following official agency: Titus Grain Inspection, Inc.: Boswell Grain Company, Boswell, Benton County, Indiana; Dunn Grain, Dunn, Benton County, Indiana; York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana; and Raub Grain Company, Raub, Benton County, Indiana.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Oklahoma, is assigned to Enid.

Adair, Alfalfa, Atoka, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward Counties.

Interested persons, including Champaign and Enid, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Champaign area is for the period beginning June 1, 1998, and ending May 31, 2001. Designation in the Enid area is for the period beginning July 1, 1998, and ending May 31, 2001. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–31337 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the State of Minnesota

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces the designation of the Minnesota Department of Agriculture (Minnesota) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 30, 1997, **Federal Register** (62 FR 35147), GIPSA asked persons interested in providing official services in the geographic area assigned to

Minnesota to submit an application for designation. Applications were due by July 30, 1997. There were three applicants for the Minnesota area: Mid-Iowa Grain Inspection, Inc., applied for designation to provide official services in the Minnesota counties of Filmore, Houston, and Winona; Minnesota applied for designation to provide official services in the entire Minnesota area; and Sioux City Inspection and Weighing Service Company, applied for designation to provide official services in the Minnesota counties of Murray, Nobles, Pipestone, and Rock.

GIPSA requested comments on the applicants for the Minnesota area in the September 2, 1997, **Federal Register** (62 FR 46245). Comments were due by October 1, 1997. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Minnesota is better able to provide official services in the Minnesota area.

Effective January 1, 1998, and ending December 31, 2000, Minnesota is designated to provide official services in the geographic area specified in the June 30, 1997, **Federal Register**.

Interested persons may obtain services by contacting Minnesota at 612–341–7190.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–31334 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the State of Mississippi

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces the designation of the Mississippi Department of Agriculture and Commerce (Mississippi) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 30, 1997, **Federal Register** (62 FR 35147), GIPSA asked persons interested in providing official services in the geographic area assigned to Mississippi to submit an application for designation. Applications were due by July 30, 1997. Mississippi, the only applicant for the Mississippi area, applied for designation to provide official services in the entire area currently assigned to them.

Since Mississippi was the only applicant for the Mississippi area, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Mississippi is able to provide official services in the geographic area for which they applied. Effective January 1, 1998, and ending December 31, 2000, Mississippi is designated to provide official services in the geographic area specified in the June 30, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Mississippi at 601–947–4095.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 21, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–31336 Filed 11–28–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Short Supply Regulations—Unprocessed Western Red Cedar.

Agency Form Number: None.

OMB Approval Number: 0694–0025.

Type of Request: Extension of a currently approved collection of information

Burden: 36 hours.

Average Time Per Response: 25 minutes per response.

Number of Respondents: 35 respondents.

Needs and Uses: The information is collected as supporting documentation for the export of western red cedar logs. The Export Administration Act's prohibits the export of such logs from State or Federal lands. The information is used for export enforcement purposes to ensure that the logs are being shipped legally.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Victoria Baecher-Wassmer (202) 395–5871.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: November 21, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31341 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Request for Special Priorities Assistance.

Agency Form Number: BXA–999.

OMB Approval Number: 0694–0057.

Type of Request: Extension of a currently approved collection of information.

Burden: 600 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 1,200 respondents.

Needs and Uses: The U.S. must have the capability to rapidly mobilize its resources in the interest of national security. Therefore, to achieve prompt delivery of articles, products and materials to meet national security or emergency preparedness' requirements, the Defense Priorities Allocation System was developed. The information collected on BXA–999 from defense contractors and suppliers is needed for the enforcement and administration of the Defense Production Act and the Selective Service Act to provide Special Priorities Assistance under the Defense Priorities and Allocation System Regulations. It is only used when there is difficulty in obtaining a needed item. The information provided is used by the appropriate agency is helping to resolve the problem.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Victoria Baecher-Wassmer.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: November 21, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31342 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–821]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled From Germany; Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: David Genovese, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–0498.

SUMMARY: On October 30, 1997, the Department of Commerce published in the **Federal Register** (62 FR 58705) a notice announcing the initiation of an administrative review of the antidumping duty order on Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany, covering the period March 1, 1996, through August 31, 1997. This review has now been rescinded as a result of the withdrawal of the request for administrative review by the interested party.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1997, the Department of Commerce (''the Department'') received a request from MAN Roland Druckmaschinen AG (''MRD'') and MAN Roland Inc. (''MRA'') to conduct an administrative review of MRD and MRA's U.S. sales, pursuant to 19 CFR 351.213(b)(2). On October 30, 1997, the Department published in the **Federal Register** (62 FR 58705) a notice announcing the initiation of an administrative review of the antidumping duty order on Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Germany, covering the period March 1, 1996, through August 31, 1997.

Rescission of Review

On November 17, 1997, we received a timely request for withdrawal of the request for administrative review from MRD and MRA. Because there were no other requests for administrative review from any other interested party, in accordance with section 351.213(d)(1) of the Department's regulations, we have rescinded this administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: November 21, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 97–31438 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Silicon metal from Brazil; extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for its final results in the administrative review of the antidumping order on silicon metal from Brazil. The review covers the period July 1, 1995, through June 30, 1996.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or James C. Doyle, AD/CVD Enforcement, Group III, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the final results to February 8, 1998, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (See Memorandum from Joseph A. Spetrini to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 USC 1675(a)(3)(A)).

Dated: November 18, 1997.

Joseph Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–31437 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Recruitment for Additional Members for ETTAC.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) was rechartered on May 31, 1996, for two years pursuant to the provisions in Title IV of the Jobs through Trade Expansion Act, 22 U.S.C. 2151, and under the Federal Advisory Committee Act, 5 U.S.C. App. 2. The ETTAC serves as an advisory body to the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, reporting directly to the Secretary of Commerce in his capacity as Chairman of the TPCC, as well as to other TPCC agencies. Members of the ETTAC have experience in exporting the full range of environmental technologies products and services.

Under the Federal Advisory Committee Act, membership in a committee constituted under the Act must be balanced. To achieve balance the Department is seeking additional candidates from small, medium-sized, and large businesses from the following subsectors of the environmental industry.

(1) Analytic Services
(2) Financial Services
(3) Trade Associations focused on the international market
(4) Air Pollution Control/Monitoring Equipment
(5) Process and Prevention Technologies
(6) Environmental Energy Sources
(7) Solid and Hazardous Waste Equipment and Management
(8) Engineering and Consulting

Committee members serve in a representative capacity, and must be able to generally represent the views and interests of a certain subsector. We are seeking CEO, President or Executive Vice President-level company candidates.

Please send a fact-sheet on your company that details your activity in the subsector as listed above, as well as a short biographical sketch on the executive who wishes to become a candidate. Materials can be faxed to the number listed below.

DEADLINE: This request will be open for three weeks from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: The Office of Environmental Technologies Exports, Room 1003, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; phone 202–482–5225. Materials may be faxed to 202–482–5665, attention Jane Siegel or Sage Chandler.

Dated: November 24, 1997.

Anne L. Alonzo,

Deputy Assistant Secretary for Environmental Technologies Exports.

[FR Doc. 97–31340 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 971031261–7261–01]

Announcing Request for Computer Security and Privacy Issues

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: Computer security and privacy issues are requested for input to the planning process for 1998 activities of the Computer System Security and Privacy Advisory Board. The Board advises the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Public input into this process is particularly encouraged and valued.

DATES: Comments are due January 30, 1998.

ADDRESSES: Comments should be sent to Executive Secretary, Computer System Security and Privacy Advisory Board, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001.

Comments received will be made publicly available at the Central Reference and Records Inspection Facility, Herbert C. Hoover Building, Room 6020, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Executive Secretary, Computer System Security and Privacy Advisory Board, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, or telephone [301] 975–3696.

SUPPLEMENTARY INFORMATION: The Computer System Security and Privacy Advisory Board was established pursuant to the Computer Security Act of 1987. Its charter specifies its mission and objectives as follows:

The Board shall identify emerging managerial, technical, administrative, and physical safeguard issues relative to computer systems security and privacy.

The Board shall advise the Secretary of Commerce and National Institute of Standards and Technology (NIST) on security and privacy issues pertaining to federal computer systems.

To report its findings to the Secretary of Commerce, the Director of the Office of Management and Budget, the Director of the National Security Agency, and the appropriate committees of the Congress.

The Board will function solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

As part of the planning process for its 1998 work priorities, candidate computer security and privacy issues appropriate for the Board's consideration are sought. Public input into this process is particularly encouraged and valued. Candidate issues are solicited from the general public, privacy experts, academia, computer security experts, the information technology industry, and federal, state and local organizations.

To be more useful in the planning process, it would be helpful if issues suggested would be presented in the following format:

Issue Title:

Issue Summary:

Interested parties/Potential briefers: (The names of specific organizations and contacts [on all sides of an issue] would be appreciated.)

Described potential options for Board Action:

Time criticality:

One time/continuing: (Is this an issue which the submittor suggests requires a one-time action or continuing study?)

Other appropriate comments:

Additional information regarding the Board's activities is available at the following website address: http://csrc.nist.gov/csspab/.

Since all submissions will be publicly available, comments should not contain proprietary information or information protected under the Privacy Act.

The next meeting of the Board is tentatively scheduled for December 9–11 at NIST. NIST will endeavor to make

any comments that are received by that date available at the meeting. All comments received will be made available at the Central Reference and Records Inspection Facility, Herbert C. Hoover Building, Room 6020, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

NIST and the Board extend their appreciation to all those providing public comment.

Dated: November 24, 1997.

Elaine Bunten-Mines,

Director Program Office

[FR Doc. 97–31367 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–CN–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: Extension of public comment period.

SUMMARY: On November 4, 1997, NMFS published a notice of availability of a draft Environmental Assessment (EA) on the alternatives being considered for implementation of the Atlantic Offshore Cetacean Take Reduction Plan. NMFS is hereby extending the public comment period for an additional 30 days.

DATES: Written comments must be received on or before January 4, 1998.

ADDRESSES: Copies of the draft 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, fax: 301/713–2322.

FOR FURTHER INFORMATION CONTACT: Victoria Cornish, Office of Protected Resources, (301) 713-2322.

SUPPLEMENTARY INFORMATION: On November 4, 1997, NMFS published a notice of availability of a draft EA on the alternatives being considered for implementation of the Atlantic Offshore Cetacean Take Reduction Plan. The notice indicated that comments must be received on or before December 4, 1997.

NMFS has since received a request to extend the public comment period for an additional 30 days. This request is made because at least 2 members of the Atlantic Offshore Cetacean Take Reduction Team will be out of the country for a large portion of the public comment period and would be unable to sufficiently review and comment on the EA. NMFS agrees that the current public comment period is not long enough to allow for sufficient public comment in lieu of other previous commitments by members of the team.

NMFS hereby extends the public comment period for an additional 30 days, until January 4, 1998.

Dated: November 24, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–31315 Filed 11-28-97; 8:45 am]

BILLING CODE 31315–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497H]

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 Essential Fish Habitat (EFH) Technical Review Panel (TRP).

DATES: The meeting is scheduled to begin at 1:00 p.m. on Monday, December 15, 1997, and adjourn at 3:00 p.m. on Tuesday, December 16, 1997.

ADDRESSES: The meeting will be held at the at the Wyndham Riverfront Hotel, 701 Convention Center Boulevard, New Orleans, Louisiana 70130; telephone: 504–524–8200.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: At this meeting, the TRP will review the technical accuracy and adequacy of preliminary drafts of Sections 4, 5, 6 and 7 of the Generic Amendment addressing EFH requirements in the fishery management plans of the Gulf of Mexico. EFH amendments are mandated by the recent passage of the Magnuson-Stevens Fishery Conservation and Management Act.

The TRP will review each section and provide updated information to the extent possible. Based on the review, the TRP will develop comments and recommendation for consideration by the Council.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other issues not on the agenda may come before the Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Panel action during this meeting. Panel 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 December 8, 1997.

Dated: November 25, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31445 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497A]

Longline Advisory Panel; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Longline Advisory Panel (AP) for the pelagic longline fishery for Atlantic highly migratory species (HMS) will hold its third meeting on Dec. 9, 1997, in Alexandria, VA to discuss the draft report on the future management options for the pelagic longline fishery.

DATES: The longline AP will meet on Dec. 9, 1997, from 9:30 a.m. to 5:30 p.m.

ADDRESSES: The AP meeting will be held at the Ramada Plaza Hotel in Alexandria, VA, 901 North Fairfax Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Liz Lauck, 1315 East-West Highway, Silver Spring, MD 20910, telephone: (301) 713–2347, Fax: (301) 713–1917.

SUPPLEMENTARY INFORMATION: The Longline AP was established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* The Longline AP will assist the Secretary of Commerce in preparing a study on the feasibility of implementing a comprehensive management system for the pelagic longline fishery for Atlantic HMS. The AP meeting is open to the public and will be attended by members of the AP, including appointed members, representatives of the five Fishery Management Councils that work with HMS, the Atlantic and Gulf states. The main agenda item for the longline AP will be a discussion of the draft report on the feasibility of implementing a comprehensive management system for the longline fishery.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jill Stevenson or Liz Lauck (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting date.

Dated: November 24, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31441 Filed 11–25–97; 4:32 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497F]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Demersal Species Committee meeting as a Council Committee of the Whole, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board; its Committee Chairmen, and its Executive Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, December 16, 1997 through Thursday, December 18, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Dunes Manor, 2800 Baltimore Avenue, Ocean City, MD; telephone: 1–800–523–2888.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: On Tuesday, December 16, 1997, the Surfclam and Ocean Quahog Committee will meet from 10:00 a.m. until noon. The Demersal Species Committee, meeting as a Council Committee of the Whole together with the ASMFC Summer Flounder, Scup, and Black Sea Bass Board will meet from 1:00–4:00 p.m. The Council Committee chairmen will meet from 4:00–5:00 p.m. On Wednesday, December 17, 1997, the Demersal Species Committee, meeting as a Council Committee of the Whole with the ASMFC Summer Flounder, Scup, and Black Sea Bass Board will meet from 8:00 a.m. until noon. The Executive Committee will meet from noon until 1:00 p.m. The Council will meet from 1:00–5:00 p.m. On Thursday, December 18, 1997, the Council will meet from 8:00 a.m. until approximately 2:00 p.m.

The purpose of these meetings is as follows: possible Council adoption of Amendment 10 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP) (Maine ocean quahog fishery); discuss the 1998 Council's work schedule; adopt recommended recreational measures for summer flounder, scup, and black sea bass; revise Election Policy in the Statement of Operating Practices and Procedures (SOPPs); and discuss Council action on final provisions and the possibility of additional hearings on the Monkfish FMP. The Council will also receive a presentation on the sea scallop stock assessment by the Northeast Fisheries Science Center and possibly comment on Amendment 7 to the Sea Scallop FMP; possibly comment on International Commission for the Conservation of Atlantic Tunas proposed positions; and hear committee reports and other fishery management matters.

The above agenda items may not be taken in the order in which they appear and are subject to change as necessary; other items may be added. This meeting may also be closed at any time to discuss employment or other internal administrative matters.

Although other issues not contained in this agenda may come before this Council for discussion, in according with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council 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 Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 25, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31443 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497G]

Pacific Fishery Management Council; Scheduled Teleconference

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

ACTION: Notice of scheduled teleconference.

SUMMARY: The Pacific Fishery Management Council's (Council) Budget Committee will hold a telephone conference call.

DATES: The conference call will be held on December 15, 1997, at 1:30 p.m. (Pacific Standard Time).

ADDRESSES: The telephone conference will originate from the Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Larry Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the conference call is to adopt a budget for the operation of the Council during calendar year 1998. At it's November 4–7, 1997 meeting, the Council instructed the Budget Committee to confer after the amount available to the Regional Fishery

Management Councils was determined by Congress and NMFS. The amount available to the Pacific Council should be known well in advance of the December 15 conference call.

Members of the public wishing to listen to this conference or desiring further information should contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The teleconference is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the teleconference date.

Dated: November 25, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31442 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112497B]

Marine Mammals; Scientific Research Permit No. 872–1397

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Ann E. Bowles, Ph.D., Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA 92109, has been issued a permit for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802–4213 (562/980–4001).

SUPPLEMENTARY INFORMATION: On July 18, 1997, notice was published in the **Federal Register** (62 FR 38521) that a request for a scientific research permit to take (i.e., harass) up to 10 beached rehabilitated animals of each of three pinniped species annually: northern elephant seals (*Mirounga angustirostris*) Pacific harbor seals (*Phoca vitulina richardsi*), and California sea lions (*Zalophus californianus*) had been submitted by the above-named individual. The proposed research will be conducted over a 5-year period at Hubbs-Sea World Research Institute and Sea World, San Diego, California. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Dated: November 25, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–31444 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Costa Rica and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 1998.

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). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; 55 FR 21047, published on May 22, 1990, and 62 FR 49206, published on September 19, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,046,972 dozen.
342/642	386,496 dozen.
347/348	1,764,380 dozen.
443	215,128 numbers.

Category	Twelve-month limit
447	11,599 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 24, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989) and 62 FR 49206 (September 19, 1997), you are directed to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 1998 and extending through December 31, 1998:

Category	Guaranteed access level
340/640	650,000 dozen.
342/642	250,000 dozen.
347/348	1,500,000 dozen.
443	200,000 numbers.
447	4,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of May 15, 1990 shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–31428 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 1998 through December 31, 1998 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period.

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). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	265,322 dozen.
410	935,894 square meters.
433	17,748 dozen.
434	15,059 dozen.
435	26,030 dozen.
443	166,724 numbers.
444	53,783 numbers.
448	23,004 dozen.
604	1,313,200 kilograms.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 1, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 97–31427 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift and 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 68143, published on December 27, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 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, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on December 2, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
313	35,104,374 square meters.
314	6,936,923 square meters.
315	12,967,314 square meters.
317	42,063,668 square meters.
341	4,636,273 dozen of which not more than 2,529,123 dozen shall be in Category 341–Y [2].
369–D [3]	1,299,344 kilograms.
641	1,262,218 dozen.
647/648	414,548 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

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. 97–31431 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Jamaica and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for the period January 1, 1998 through December 31, 1998.

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). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6049, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989, and 62 FR 49206, published on September 19, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	680,313 dozen pairs.
338/339/638/639	1,341,400 dozen.

Category	Twelve-month restraint limit
340/640	627,273 dozen of which not more than 530,770 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [1].
341/641	787,663 dozen.
345/845	194,359 dozen.
347/348/647/648.	1,447,873 dozen.
352/652	2,163,395 dozen.
445/446	53,134 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 18, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 54 FR 50425 (December 6, 1989) and 62 FR 49206 (September 19, 1997), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1998 and extends through December 31, 1998:

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639.	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648.	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97–31429 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kenya

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kenya and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period.

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). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kenya and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	489,825 dozen.
360	3,537,627 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 97–31425 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 340 is being increased for special shift, reducing the limit for Category 640.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 65197, published on December 11, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 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 5, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on December 2, 1997, you are directed to adjust the limits for the following categories, as provided for in the bilateral agreement between the Governments of the United States and the Kingdom of Nepal:

Category	Adjusted twelve-month limit [1]
340	344,605 dozen.
640	96,791 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception 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.97–31432 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Pakistan and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Pakistan of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for Categories 334/634, 338, 339, 340/640, 363, 369–F/369–P and 369–S are being reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following limits:

Category	Twelve-month restraint limit
Specific limits	
219	8,193,116 square meters.
226/313	119,080,615 square meters.
237	398,483 dozen.
239pt. [1]	1,720,941 kilograms.
314	5,958,629 square meters.
315	78,725,628 square meters.
317/617	32,020,672 square meters.

Category	Twelve-month restraint limit
331/631	2,440,414 dozen pairs.
334/634	222,545 dozen.
335/635	363,476 dozen.
336/636	478,180 dozen.
338	4,625,578 dozen.
339	1,280,737 dozen.
340/640	626,093 dozen of which not more than 239,089 dozen shall be in Categories 340–D/640–D [2].
341/641	717,270 dozen.
342/642	355,011 dozen.
347/348	792,616 dozen.
351/651	318,786 dozen.
352/652	796,966 dozen.
359–C/659–C [3]	1,434,540 kilograms.
360	5,121,050 numbers.
361	5,954,709 numbers.
363	43,024,648 numbers.
369–F/369–P [4]	2,260,665 kilograms.
369–R [5]	11,157,534 kilograms.
369–S [6]	690,197 kilograms.
613/614	23,579,054 square meters
615	25,084,096 square meters.
625/626/627/628/629	77,147,475 square meters of which not more than 38,573,739 square meters shall be in Category 625; not more than 38,573,739 square meters shall be in Category 626; not more than 38,573,739 square meters shall be in Category 627; not more than 7,980,774 square meters shall be in Category 628; and not more than 38,573,739 square meters shall be in Category 629.
638/639	448,360 dozen.
647/648	850,073 dozen.
666–P [7]	764,048 kilograms.
666–S [8]	4,044,960 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] 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.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–R: only HTS number 6307.10.2020.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Pakistan of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31433 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 1998 through December 31, 1998 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period.

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). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	198,744 dozen.
338/339	2,140,318 dozen.
410	2,689,107 square meters.
433	18,991 dozen.
434	10,358 dozen.
435	13,554 dozen.
443	225,885 numbers.
611	6,117,488 square meters.
645/646	313,404 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated October 25, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 97–31424 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Romania and exported during the period January 1, 1998 through December 31, 1998 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed Romania of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for Categories 443 and 647 have been reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month limit
313	1,968,902 square meters.
314	1,476,676 square meters.
315	3,553,624 square meters.
333/833	140,743 dozen.
334	340,192 dozen.
335/835	178,276 dozen.
338/339	769,400 dozen.
340	335,838 dozen.
341/840	140,743 dozen.
347/348	600,508 dozen.
350	31,790 dozen.
352	214,071 dozen.
359pt. [1]	767,866 kilograms.
360	1,984,379 numbers.
361	1,322,920 numbers.
369pt. [2]	348,252 kilograms.
410	172,003 square meters.
433/434	9,527 dozen.
435	9,965 dozen.
442	11,541 dozen.
443	83,772 numbers.
444	41,970 numbers.
447/448	23,146 dozen.
604	1,641,933 kilograms.
638/639	704,843 dozen.
640	96,940 dozen.
647	92,290 dozen.
648	69,778 dozen.
666	140,538 kilograms.

[1] Category 359pt.: all HTS numbers except 6406.99.1550.

[2] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated January 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Romania of its intent to continue the bilateral visa arrangement for those products. An export visa will continue

to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31435 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended, between the Governments of the United States and the Russian Federation establishes a limit for wool textile products in Category 435 for the period January 1, 1998 through December 31, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for 1998.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

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). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of notes dated August 13, 1996 and September 9, 1996, as amended, between the Governments of the United States and the Russian Federation, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Russia and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of 52,020 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Russian Federation.

Products in the above category exported during 1997 shall be charged to the applicable category limit for that year (see directive dated September 19, 1996) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Russia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Russia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls 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.97–31430 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Ukraine

November 24, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A Memorandum of Understanding (MOU) dated May 6, 1995, between the Governments of the United States and Ukraine establishes limits for certain wool textile products for the period January 1, 1998 through December 31, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

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). Information regarding the 1998

CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Memorandum of Understanding dated May 6, 1995, between the Governments of the United States and Ukraine, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following limits of restraint:

Category	Twelve-month limit
435	90,100 dozen.
442	15,000 dozen.
444	65,000 numbers.
448	65,000 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Ukraine.

These limits may be revised if Ukraine becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Ukraine.

Products in Category 435 exported during 1997 shall be charged to the applicable category limit for that year (see directive dated November 1, 1996) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive for Category 435.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. 97–31426 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

November 25, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the United Arab Emirates and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated and certain limits may have been revised. Integrated products will no longer be subject to quota. CITA has informed the United Arab Emirates of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1998 period. The 1998 levels for Categories 315 and 361 are zero.

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** notices 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998 in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	1,246,672 square meters.
226/313	2,131,840 square meters.
315	–0–.
317	34,390,917 square meters.
326	2,012,461 square meters.
334/634	254,068 dozen.
335/635/835	174,413 dozen.
336/636	220,192 dozen.
338/339	628,396 dozen of which not more than 418,930 dozen shall be in Categories 338–S/339–S [1].
340/640	389,572 dozen.
341/641	341,130 dozen.
342/642	271,008 dozen.
347/348	466,809 dozen of which not more than 233,404 dozen shall be in Categories 347–T/348–T [2].
351/651	194,786 dozen.
352	359,084 dozen.
361	–0–.
363	6,708,201 numbers.
369–S [3]	93,379 kilograms.
369–O [4]	662,361 kilograms.
638/639	254,068 dozen.
647/648	364,165 dozen.

Category	Twelve-month restraint limit
847	228,662 dozen.

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[2] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6304.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed the United Arab Emirates of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–31434 Filed 11–28–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Futures Contracts in Corn and Soybeans; Draft Proposed Revisions to Delivery Specifications

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of, and Request for Public Comment on, Draft Proposed Revisions by the Chicago Board of Trade to Delivery Specifications on Corn and Soybean Futures Contracts.

SUMMARY: The Commodity Futures Trading Commission (Commission) on November 7, 1997, issued an Order changing and supplementing under section 5a(a)(10) of the Commodity Exchange Act (Act), 7 U.S.C. 7a(a)(10), the delivery terms of the corn and soybean futures contracts of the Board of Trade of the City of Chicago (CBT). The CBT previously had submitted proposed changes to the delivery specifications of its corn and soybean futures contracts in response to a December 19, 1996 notification to the CBT by the Commission that the CBT corn and soybean futures contracts no longer accomplish the objectives of that section of the Act. The Commission in its November 7 Order changed and supplemented the CBT proposal for its soybean futures contract by making changes relating to the delivery locations proposed by the CBT and for both its soybean and corn futures contracts by making changes relating to the locational price differentials proposed by the CBT, to a contingency rule proposed by the CBT and to a minimum net worth requirement for eligibility to issue shipping certificates proposed by the CBT. The November 7 Order also provided that the CBT was not precluded ''from submitting for Commission review and approval under sections 5a(a)(10) and 5a(a)(12) of the Act any alternative proposed delivery specifications for its corn or soybean futures contracts.''

The CBT on November 18, 1997, provided to the Commission draft proposed revisions to the corn and soybean futures contracts which, although approved by the CBT Board of Directors, have not yet been presented to the CBT membership for its approval. Those draft proposed revisions contain delivery specifications different from those contained in the Commission's November 7 Order.

The Commission is providing notice of the CBT's draft proposed revisions in order to provide the public with an opportunity to comment to the Commission on them. The Commission has determined that publication of the CBT's draft proposed revisions for public comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received by January 15, 1998.

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 ''Corn and Soybean Delivery Points; Draft Proposed Revisions.''

FOR FURTHER INFORMATION CONTACT: John Mielke, Acting Director, or 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 electronically, Mr. Architzel at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

Section 5a(a)(10) of the Act provides that, as a condition of contract market designation, boards of trade are required to:

> Permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market

an opportunity to make appropriate changes in such rules and regulations. If the contract market within seventy-five days of such notification fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *.

The Commission, by letter dated December 19, 1996, commenced a proceeding under section 5a(a)(10) of the Act by issuing to the CBT a notification that the delivery specifications of its corn and soybean futures contracts no longer accomplish the statutory objectives of ''permit[ting] the delivery of any commodity * * * at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.'' Letter of December 19, 1996, to Patrick Arbor from the Commission, 61 FR 67998 (December 26, 1996) (section 5a(a)(10) notification).

The CBT, on April 16, 1997, submitted its response to the section 5a(a)(10) notification in the form of proposed exchange rule amendments. Those proposed rule amendments would have replaced the existing delivery system involving delivery of warehouse receipts representing stocks of grain stored at terminal elevators in Chicago, Toledo, and St. Louis with delivery of shipping certificates.[1] A shipping certificate would have provided for corn or soybeans to be loaded into a barge at one of the shipping stations located along a 153-mile segment of the Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois and additionally to be delivered in Chicago by rail or vessel. Delivery at all eligible locations would have been at par. The CBT's proposal would have eliminated the current delivery points on its corn and soybean futures contracts at Toledo, Ohio and St. Louis, Missouri and would have restricted firms eligible to issue shipping certificates to those meeting a minimum net worth requirement of $40 million, in addition to a number of other requirements.

The Commission published the substance of the CBT's proposed amendments in the **Federal Register** for public comment, receiving almost 700 comments, the largest number of comments ever received by the Commission on any issue before it. In addition, at the request of the CBT, the Commission held a public meeting on June 12, 1997, to accept oral and written statements by the CBT and interested members of the public. 62 FR 29107 (May 29, 1997).

On September 15, 1997, the Commission issued a proposed order, publishing its text in the **Federal Register** with a request for public comment. 62 FR 49474 (September 22, 1997). Over 230 commenters submitted comments to the Commission on the proposed order. In addition, the Commission held a public meeting on October 15, 1997, at which the CBT was afforded an opportunity to appear before the Commission and to be heard. Subsequently, the CBT filed written exceptions to the proposed order.

On November 7, 1997, the Commission issued a final Order to the CBT under section 5a(a)(10) of the Act. 62 FR 60831 (November 13, 1997) (November 7 Order or Order). The Commission's Order found that the CBT's proposal failed to meet the requirements of sections 5a(a)(10), 5a(a)(12), 8a(7), and 15 of the Act because of (1) an inadequate amount of deliverable supplies of soybeans; (2) the failure to include required locational differentials; (3) the failure to provide an adequate rule for alternative deliveries if river transportation were obstructed; and (4) the substantial impediment to eligibility for issuing corn and soybean shipping certificates imposed by the CBT's proposed $40 million minimum net worth requirement.

Based on these findings, the Commission changed and supplemented the delivery locations for CBT's soybean futures contract by retaining the Toledo, Ohio switching district and the St. Louis/East St. Louis/Alton areas as delivery locations, with Toledo priced at par and the St. Louis/East St. Louis/Alton area priced at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois. The Commission also required that both corn and soybeans from shipping locations on the northern Illinois River be deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price. With respect to both the CBT corn and soybean futures contracts, the Commission ordered that the contingency plan for alternative delivery procedures when traffic on the northern Illinois River is obstructed be changed and supplemented and that the $40 million minimum net worth eligibility requirement for issuers of shipping certificates be eliminated. The Commission ordered that the contract terms as changed and supplemented would apply beginning with contract months in the year 2000 and that the preexisting contract terms would apply to contract months in the year 1999.

The Commission's Order did not ''preclude( ) the CBT from submitting for Commission review and approval under sections 5a(a)(10) and 5a(a)(12) of the Act any alternative proposed delivery specifications for its corn or soybean futures contracts.'' 62 FR 60833. To the contrary, the Order provided that the CBT—

> Will continue to be free to propose revisions of the new terms to the Commission for its consideration under sections 5a(a)(10) and 5a(a)(12) or to submit a petition to the Commission to reconsider or to amend this Order. If the CBT believes that an alternative to the new terms and to its original proposal would better serve its business interests and would also meet the statutory requirements, the CBT should submit such a proposed rule revision or petition.

Id. at 60834.

By letter dated November 17, 1997, the CBT on November 18, 1997, notified the Commission that it would be submitting for Commission review such an alternative for contract months in the year 2000 and thereafter. Proposed revisions of the CBT corn and soybean futures contracts will be submitted to the CBT membership for its approval in mid-December 1997, and the CBT expects to submit the proposed revisions for Commission review and action upon membership approval. However, the CBT has requested that the Commission seek public comment at this time on the draft proposed revisions in anticipation of the CBT's receiving the requisite approval of its membership in order to expedite the Commission's consideration and review of them. The Commission has determined that publication of the draft proposed revisions at this time is in the public interest and will assist the Commission in its consideration of these issues.

II. CBT's Draft Proposed Revisions

CBT's draft proposed revisions for contract months in the year 2000 and thereafter would have the following terms. The soybean futures contract would call for shipping certificate

[1] A shipping certificate is a negotiable instrument that represents a commitment by the issuer to deliver (e.g., load into a barge) corn or soybeans to the certificate holder, pursuant to terms specified by the CBT, whenever the holder decides to surrender the certificate to the issuer.

delivery from shipping stations located along the entire Illinois River (extending from Chicago and including Burns Harbor, Indiana, to Grafton, Illinois at the river's mouth) and that portion of the upper Mississippi River from the mouth of the Illinois River to St. Louis. Delivery at Chicago/Burns Harbor would be at par, and delivery at other locations would be at the following premiums: shipping stations located along the Illinois River from river mile 304 at the junction of the Calumet Sag Channel and the Chicago Sanitary & Ship Canal to river mile 170 between Chillicothe and Peoria would be priced at a premium of 2 cents per bushel; shipping stations located from river mile 170 to the mouth of the Illinois River at Grafton would be priced at a premium of 3 cents per bushel; and shipping stations located at the St. Louis/East St. Louis/Alton delivery area would be priced at a premium of 5 cents per bushel.

The corn futures contract would retain the delivery locations contained in the Commission's November 7 Order: shipping stations located along that portion of the northern Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois. Delivery at Chicago/Burns Harbor would be at par; delivery from shipping stations located along the Illinois River from river mile 304 at the junction of the Calumet Sag Channel and the Chicago Sanitary & Ship Canal to river mile 170 between Chillicothe and Peoria would be priced at a premium of 2 cents per bushel; and delivery from river mile 170 to river mile 151 at Pekin would be at a premium of 3 cents per bushel.

To qualify for regularity, a shipping certificate issuer would have to register to load a minimum of 3 barges per day at Chicago/Burns Harbor and at St. Louis/East St. Louis/Alton (for soybeans) and one barge per day at all other locations. In addition, a regular issuer would have to be capable of registering a minimum number of certificates equivalent to 30 barges (1,650,000 bushels) of corn or soybeans. A shipper would also have to have a net worth equivalent to four times the value of the certificates issued and could not issue certificates for an amount greater than 30 times its registered daily barge-loading capacity or, in the case of Chicago, its registered storage capacity. The contracts would also provide a contingency plan in case of obstructions to river traffic that would require a shipper to make the product available in a loaded barge with freight pre-paid to New Orleans at an Illinois or Mississippi River location below the obstruction. The receiver would be obligated to reimburse the shipper at a flat specified rate (detailed below) intended to cover the cost of shipping from the original shipping station to New Orleans.

The quality specifications, unit of trading, delivery months, last trading day, price basis, price fluctuation limits, and speculative position limits for the corn and soybean futures contracts would be the same as those for the respective existing futures contracts.

The terms of CBT's draft proposed revisions differ in a number of ways from the contract terms contained in the Commission's November 7 Order. In particular, for soybeans the draft proposed revisions would delete Toledo, Ohio as a delivery point, but add shipping stations on the Illinois River from Pekin to the river's mouth. In addition, for both corn and soybeans the draft proposed revisions would establish a fixed cents per bushel price differentials for all non-par locations within a specified ''region,'' in contrast to the Commission's Order which established separate price differentials for each non-par location based on the difference between 150% of tariff rate applicable to that shipping station and 150% of tariff rate applicable to Chicago.

The CBT's draft proposed revisions would also establish a new regularity requirement on shipping certificate issuers which is not contained in the Commission's Order. Specifically, issuers would have to register a minimum number of shipping certificates equivalent to 30 barges (1,650,000 bushels) of corn or soybeans. In addition, the CBT's draft proposed revisions for soybeans would require issuers at St. Louis/East St. Louis/Alton to load three barges per day, rather than one barge per day as provided in the Commission's Order.

Finally, the reimbursement method for makers of delivery under the draft proposed revisions to the contingency rule would be different from that established in the Commission's Order. In particular, the draft proposed revisions would require shippers affected by a river obstruction to make the product available in a loaded barge with freight pre-paid to New Orleans at an Illinois or Mississippi river location below the obstruction. Under the Order, the shipper is merely required to provide the product at a shipping station below the obstruction. In addition, under the CBT's draft proposed revisions, the receiver would be obligated to reimburse the shipper at a fixed rate intended to cover the full cost of shipping the product from the original shipping station to New Orleans, set at 20 cents per bushel for Chicago/Burns Harbor issuers, 16 cents per bushel for northern Illinois River issuers, 12 cents per bushel for southern Illinois River issuers, and for soybeans only, 7 cents per bushel for St. Louis/East St. Louis/Alton issuers. Under the Commission's Order, reimbursement is made based on the difference in barge freight to New Orleans from the original shipping station and the alternative shipping station, calculated at 150% of the tariff rate applicable to the respective stations, and thus is the same as the method of establishing locational differentials between delivery locations under normal (non-contingency) situations.

The complete text of the CBT's draft proposed revisions for the corn and soybean futures contracts can be accessed through the Commission's internet web site, at http://www.cftc.gov., ''What's Pending,'' and is also available by request from the Commission's Office of the Secretariat at the address noted above.

III. Procedure for Commission Review

The CBT's letter of November 17, 1997, indicated the CBT's intention to file its proposed revisions as applications for contract market designations and to request ''fast track'' review ''pursuant to Section 5a(a)(12) of the Act and CFTC regulation rule 1.41.'' The Commission finds that upon submission by the CBT the proposed revisions will be ineligible for fast track consideration under the Commission's rules for the following reasons. The Commission has issued a final Order under section 5a(a)(10) of the Act relating to the contract terms of the CBT's corn and soybean futures contracts. The CBT's proposed revisions to that Order pose difficult economic and legal issues which cannot appropriately be addressed under the summary fast track procedures. Moreover, the Commission recognizes that the broad public interest in this issue requires that the public be given an adequate opportunity to comment on the proposed revisions. Therefore, the Commission will consider the proposed revisions, when submitted by the CBT, under the provisions of sections 5a(a)(10), 5a(a)(12) and 6 of the Act (and other provisions of the Act, as applicable) and not under the fast track procedures.

Even though the Commission finds that the CBT's proposed revisions will be ineligible for fast track review when submitted, it intends to act expeditiously on them. Moreover, the Commission believes that publication of the CBT's draft proposed revisions for a

comment period of forty-five days will provide sufficient time for public consideration of these issues and will look with disfavor upon requests for extension of the comment period.

Accordingly, for the above reasons, the Commission finds that publication of the CBT's draft proposed revisions is in the public interest and will assist the Commission in its consideration of these issues. Commenters are invited to analyze the following issues relating to the CBT's draft proposed revisions and to submit written data, views or comments relating to the draft proposed revisions:

1. Would available deliverable supplies of corn and soybeans be sufficient ''to tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce,'' as required by the Act?

2. Would the price differentials for delivery at non-par locations appropriately reflect cash market price differentials for corn or soybeans at such locations relative to each commodity's value at the par delivery point of Chicago, Illinois?

3. Would the proposed load-out provisions calling for three barges per day at Chicago/Burns Harbor and at St. Louis/East St. Louis/Alton (for soybeans) and one barge per day at all other locations conform to commercial practices?

4. Under the contingency plan for river obstructions, the maker would be required to provide the product in loaded barges cif New Orleans. Would the reimbursement to makers of delivery reflect commercial practices? How does the reimbursement scheme relate to the locational price differentials for non-contingency conditions?

5. Would the minimum net worth requirements be necessary to ensure performance on the corn and soybean futures contracts? Do they unduly limit eligibility of firms to become issuers of shipping certificates?

Issued in Washington, D.C., this 26th day of November, 1997, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31534 Filed 11–28–97; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to Minneapolis Grain Exchange Durum Wheat Futures Contract and an Application for Designation as a Contract Market in Durum Wheat Futures Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed rule amendments and an application for contract market designation.

SUMMARY: The Minneapolis Grain Exchange (MGE or Exchange) has proposed amendments to the dormant durum wheat futures contract, along with a proposal to reactivate trading in that futures contract pursuant to the provisions of Commission Regulation 5.2. In addition, the Exchange submitted an application for designation as a contract market in durum wheat futures options. The proposals 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 December 16, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 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 MGE durum wheat.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov

SUPPLEMENTARY INFORMATION: The proposed amendments and the designation application were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on January 2, 1998, 45 days after receipt of the proposals. 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 proposals submitted under the regular review procedures.

The amended durum wheat futures contract would call for the delivery at par of shipping certificates representing 5,000 bushels of durum wheat meeting or exceeding specified quality requirements, including a minimum test weight of 60 pounds per bushel and a minimum protein content of 13 percent. Issuers of the proposed shipping certificates would be required to meet certain financial and other requirements, and must be approved by the MGE. Upon surrender of a shipping certificate, the issuer would be required to load the delivery durum wheat in rail cars at a location specified by the certificate issuer, with the issuer being obligated to pay the railroad freight costs to a point designated by the issuer located in the Minneapolis-St. Paul Switching District. Delivery by truck would also be permitted under specified conditions.

Shipping certificate receivers would be obligated to pay a premium charge of one-twelfth of one cent per bushel for each calendar day that the receiver holds the certificates.

Trading would be conducted in the contract months of March, May, July, September, and December. Prices would be quoted in dollars and cents per bushel. The minimum price fluctuation would be one-quarter (¼) cent per bushel. A maximum daily price fluctuation limit of 20 cents per bushel would be applicable to trading at all times in each contract month, except that such price limit would not be applicable to expiring contract months commencing on the first business day of such months.

Delivery of shipping certificates could be made on any business day of the contract month. Trading in an expiring contract month would end on the business day immediately preceding the last seven business day of that month.

Durum wheat options would trade in the same months as the futures contract. The last trading day for expiring option contract months would be the Friday that precedes the first notice day of the underlying futures contract month by at least five business days. The options for

such months would expire at 10:00 a.m. on the first Saturday following the last trading day. Thus, delivery on the futures contract would not be made until after the corresponding option had expired.

Copies of the proposed amendments and terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies 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 MGE in support of the proposals 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 proposals, or with respect to other materials submitted by the MGE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 24, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–31318 Filed 11–28–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: National Defense Panel, DoD.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on December 8 & 9, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public from 0900–1700, December 8 & 9, 1997 in order for the Panel to discuss classified material.

DATES: December 8 & 9, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington, VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0900–1700 on December 8 & 9. During the closed sessions on December 8th & 9th from 0900–1700 the Panel will meet in Executive Session to write and review the NDP Report at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: November 21, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–31325 Filed 11–28–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense Panel Meeting

AGENCY: National Defense Panel, DoD.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on November 24 & 25, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0900–1700, November 24 & 25, 1997 in order for the Panel to discuss classified material.

DATES: November 24 & 25, 1997.

ADDRESSES: Suite 532, 1931 Jefferson Davis Hwy, Arlington VA.

SUPPLEMENTARY INFORMATION: The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Public Law 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

PROPOSED SCHEDULE AND AGENDA: The National Defense Panel will meet in closed session from 0900–1700 on November 24 & 25. During the closed sessions on November 24th & 25th from 0900–1700 the Panel will meet in Executive Session to write and review the NDP Report at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

This Notification also is written verification that the Panel was unable to provide notice of this meeting 15 days prior to the date of the meeting due to scheduling conflicts; finding it necessary to change meeting dates to ensure that all Panel members be in attendance.

FOR FURTHER INFORMATION CONTACT: Please contact the National Defense Panel at (703) 602–4175/6.

Dated: November 21, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer Department of Defense.

[FR Doc. 97–31326 Filed 11–28–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-

Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Thursday, December 4, 1997: 1:00 p.m.–5:00 p.m. and 7:00 p.m.–9:00 p.m. Friday, December 5, 1997: 8:30 a.m.–4:00 p.m.

ADDRESSES: Doubletree Hanford House, 802 George Washington Way, Richland, Washington.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The Board will receive information on and discuss issues related to: the Tri-Party Change Package—200 Area Soils Remediation, Vadose Zone Characterization, and Maintaining Cleanup Progress at Hanford.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on November 24, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–31400 Filed 11–28–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, December 4, 1997: 6:00 p.m.–9:30 p.m.

ADDRESSES: Arvada Center for the Arts and Humanities, Studio 11A & 11B, 6901 Wadsworth Boulevard, Arvada, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Representatives from the Environmental Protection Agency and the Colorado Department of Public Health and Environment will discuss Rocky Flats' record in meeting cleanup targets for the year. In addition, the Department of Energy (DOE) will summarize the accomplishments of the company hired to perform cleanup work at the site, Kaiser-Hill. Each year, DOE selects a number of critical activities that need to be accomplished at Rocky Flats. Financial incentives are offered to the contractor if these activities can be completed during the year. DOE will outline how well Kaiser-Hill performed in these areas during 1997.

2. The Board has also set aside time during this meeting for informal discussions with members and others involved in Rocky Flats issues.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on November 24, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–31401 Filed 11–28–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Tennessee Valley Electric System Advisory Committee.

Date and Time: Wednesday, December 3, 1997, 1:00 P.M.–5:30 P.M.

Place: Opryland Hotel, Magnolia Area, Davidson Ballroom C, 2800 Opryland Drive, Nashville, Tennessee 37214.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Tennessee Valley Electric System Advisory Committee is to provide advice, information, and recommendations to the Secretary of Energy Advisory Board on the role of the Tennessee Valley Authority (TVA) in a restructured competitive electric industry. The Tennessee Valley Electric System Advisory Committee will prepare a report for submission to the Secretary of Energy Advisory Board.

Tentative Agenda

Wednesday, December 3, 1997

1:00–1:30 PM Opening Remarks
1:30–2:30 PM Committee Member Statements
2:30–3:45 PM Discussion of Issues for Committee Consideration
3:45–4:15 PM Determination of Working Group Assignments
4:15–5:15 PM Public Comment Period
5:15–5:30 PM Closing Remarks
5:30 PM Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Tennessee Valley Electric System Advisory Committee is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Nashville, Tennessee, the Tennessee Valley Electric System Advisory Committee welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Tennessee Valley Electric System Advisory Committee will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting in order to include complete information on the details of the meeting.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Tennessee Valley Electric System Advisory Committee may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on November 24, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–31387 Filed 11–28–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–363–002]

Egan Hub Partners, L.P.; Notice of Compliance Filing

November 24, 1997.

Take notice that on November 19, 1997, Egan Hub Partners, L.P., (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets to the filing, with an effective date of November 3, 1997.

Egan Hub states that the filing is being filed in compliance with an October 30, 1997, Letter Order of the Director, Office of Pipeline Regulation.

Egan Hub states that in compliance with that Letter Order the tariff sheets reflect the following: (i) Incorporates by reference GISB Standard 1.3.16, which relates to fuel reimbursement on nominations; (ii) includes in its tariff an internet address to its HTML page; (iii) conforms the electronic format of the tariff to the paper format of the tariff, including the inclusion in the electronic version of the tariff a sheet that had been omitted, as well as making editorial and pagination corrections; and (iv) conforms Egan Hub's filing to the redlining and strikeout provisions set forth in the Commission's Regulations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. A copy of this filing is on file with the Commission and is available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31374 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–20–011]

El Paso Natural Gas Company; Notice of Compliance Filing

November 24, 1997.

Take notice that on November 20, 1997, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective April 1, 1998:

Fourth Revised Sheet No. 210
Second Revised Sheet No. 210.01
Second Revised Sheet No. 211
First Revised Original Sheet No. 211A
Fourth Revised Sheet No. 215
Third Revised Sheet No. 217

El Paso states that the above tariff sheets are being filed to revise El Paso's pooling and intra-day scheduling and bumping procedures consistent with the Commission's November 5, 1997, order at Docket Nos. RP97–20–000, *et al.* and include revisions to intra-day scheduling required by the Commission's order issued on July 31, 1997, at Docket No. RP97–397–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should 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. 97–31373 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–92–000]

Koch Gateway Pipeline Company, Notice of Request under Blanket Authorization

November 24, 1997.

Take notice that on October 28, 1997, Koch Gateway Pipeline Company, (Applicant), P.O. Box 1478, Houston, Texas 77251–1478, filed under Sections 157.205 and 157.211(b) of the Commission's Regulations under the Natural Gas Act to operate as a jurisdictional facility a 6-inch tap and dual 4-inch meter station. The station was previously installed, operated and placed in service under Section 311(a) of the Natural Gas Policy Act and Section 284.3(c) of the Commission's Regulations. Applicant makes such a request, all as more fully described in its pleading in this docket which is on file with the Commission and open to public inspection.

Applicant states that the certification of these facilities will allow Applicant to provide transportation services under its blanket transportation certificate to South East Alabama Gas District, a local distribution company in Escambia County, Alabama. Applicant states that use of the facilities for jurisdictional service will not affect its ability to serve 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 therefore, 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. 97–31370 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–199–007]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1997.

Take notice that on November 20, 1997, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing.

MRT states that on July 25, 1997, it filed an uncontested Stipulation and Agreement (S&A) in the above captioned docket. On October 21, 1997, the Commission issued an order approving without modification the S&A.

MRT states that the purpose of the instant filing is to implement certain of the terms and provisions of the S&A, as provided therein, and to explain why the elimination of the definition of Receipt Point MDQ is relevant to the elimination of Flexible Contract Demand.

MRT states that a copy of this filing has been mailed to each of MRTs jurisdictional customers, parties on the service list in this proceeding, and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should 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 an are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31372 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–94–000]

National Fuel Gas Supply Corporation; Notice of Amendment

November 24, 1997.

Take notice that on November 17, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities in order to create additional firm transportation capacity from the Niagara Import Point to the Leidy Hub (1997 Niagara Expansion Project—Phase II), and permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel states that its 1997 Niagara Expansion Project—Phase II would provide an additional 23,000 Dth per day of firm winter-only capacity from the Niagara Import Point to the interconnection between the facilities of National Fuel and Transcontinental Gas Pipe Line Corporation at Leidy, Pennsylvania. It is stated that the additional firm winter-only transportation service will be provided pursuant to National Fuel's Rate Schedule FT and part 284 of the Commission's regulations. National Fuel contends that this additional capacity is subscribed on a long-term basis by Renaissance Energy U.S., Inc. (Renaissance), subject to the receipt of necessary regulatory approvals.

In order to provide this firm transportation service to Renaissance, National Fuel proposes to modify its existing Ellisburg Compressor Station in Potter County, Pennsylvania, including the abandonment and replacement of four compressor units (three 330 horsepower units and one 300 horsepower unit) with the installation of one 3,200 horsepower unit. National Fuel estimates that the project will cost $5.1 million.

National Fuel states that during each month within each winter period, it will charge Renaissance the maximum rate for FT service from the Niagara Import Point to the Leidy Hub. However, National Fuel contends that the revenues generated by such maximum rates, collected only over the winter period, will not fully recover the incremental cost of service for the

project. Therefore, National Fuel proposes to amend its Rate Schedule FT to establish a reservation surcharge applicable to Renaissance, calculated to recover the differential. National Fuel proposes a reservation surcharge of $2.3565 per Dth.

National Fuel requests that the Commission make a determination that rolled-in rate treatment is appropriate for the costs and revenues associated with its 1997 Niagara Expansion Project—Phase II, other than the costs allocated to the proposed surcharge. National Fuel contends that if the Rate Schedule FT surcharge is approved and costs are allocated in the manner discussed in Section VIII of its application, the project would not increase the rates of any of National Fuel's firm shippers by more than 0.02 percent.

In addition, National Fuel requests waiver of Section 3.2 of its Rate Schedule FT to the extent necessary to permit National Fuel to accept a guaranty from Renaissance's parent company, Renaissance Energy Ltd. of the obligations of Renaissance under the service agreement to be executed by National Fuel and Renaissance.

National Fuel requests that the Commission issue an order granting the authorization requested herein on or before March 1, 1998, to allow for commencement of the new service as scheduled on November 1, 1998.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 15, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that permission and approval for the proposed certificate and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31371 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–010, and ER96–1663–011]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company; Notice of Filing

November 24, 1997.

Take notice that on November 21, 1997, the California Independent System Operator Corporation filed for Commission approval in this docket, pursuant to Section 205 of the Federal Power Act, an application to amend the ISO Tariff and a motion for waiver of the 60 day notice requirement. The ISO requests that the proposed ISO Tariff amendments be made effective as of January 1, 1998. In addition, on November 21, the ISO filed for informational purposes its Revised Staging Plan No. 1.

The ISO states that the proposed tariff amendments, involving Settlements and billing, Ancillary Services and the ISO's financial security, are necessary for the January 1, 1998, operations of the ISO.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 2, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 97–31376 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC96–19–011; and ER96–1663–012]

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company; Notice of Filing

November 24, 1997.

Take notice that on November 21, 1997, the California Power Exchange Corporation (PX) filed for Commission approval in this docket, pursuant to Section 205 of the Federal Power Act, an application to amend the PX Tariff and a motion for waiver of the 60–day notice requirement. The PX requests that the proposed PX Tariff amendments be made effective as of January 1, 1998. In addition, on November 21, the PX filed for informational purposes its Revised Staging Plan No. 1.

The PX states that the proposed tariff amendments are necessary for January 1, 1998, operations of the tariff and involve PX Tariff modifications on, *inter alia*, security, Billing and Settlements, and conform the PX Tariff to software limitations on the PX's computer systems.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 2, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party 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. 97–31377 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–4–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1997.

Take notice that on November 19, 1997, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective November 1, 1997.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of Transco's Rate Schedule GSS and Section 4 of Transco's Rate Schedule LSS.

Transco states that Appendix B attached to the filing contains explanations of the rate changes and details regarding the computation of the revised Rate Schedule LSS and GSS rates.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31375 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–2–000, et al.]

IES Utilities, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 21, 1997.

Take notice that the following filings have been made with the Commission:

1. IES Utilities, Inc.

[Docket Nos. DR98–2–000 and DR98–2–001]

Take notice that on October 20, 1997, and October 30, 1997, IES Utilities, Inc. (IES), of Cedar Rapids, Iowa, filed an Application and an Amended Application for Approval of Depreciation Rates pursuant to Rule 204 of the Commission's Rule of Practice and Procedure (18 CFR 385.204). The proposed depreciation rates are for accounting purposes only. IES states that its proposed new depreciation rates for distribution, transmission, and general plant were approved for retail purposes by the Iowa Utilities Board (IUB) as of October 22, 1994. IES requests that the Commission allow the proposed depreciation rates to become effective on October 22, 1994.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company

[Docket No. DR98–3–000]

Take notice that on October 24, 1997, Louisville Gas and Electric Company (Louisville) of Louisville, Kentucky, filed an Application for Approval of Depreciation Rates. The proposed depreciation rates are for accounting purposes only. Louisville states that its proposed new depreciation rates for personal computers and software will bring the depreciable life into alignment with the stated Company policy of changing out personal computers every three years in order to take advantage of technological advancements. Louisville requests that the Commission allow the proposed depreciation rates to become effective on January 1, 1997.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Tucson Electric Power Company

[Docket No. DR98–5–000]

Take notice that on November 14, 1997, Tucson Electric Power Company (Tucson) filed an Application for Approval of Change in Depreciation Rates. This filing seeks Commission approval of a depreciation rate change Tucson made for book purposes effective March 31, 1996, pursuant to an order of the Arizona Corporation Commission. Tucson filed this Application in response to the Commission's order in *MidAmerican Energy Company (formerly Midwest Power Company)*, 79 FERC ¶ 61,169 (1997).

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Long Island Lighting Company

[Docket No. ER98–506–000]

Take notice that on November 3, 1997, Long Island Lighting Company (LILCO) filed Service Agreements for Non-Firm Point-to-Point Transmission Service between LILCO and Constellation Power Source, Inc., (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 27, 1997, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER98–507–000]

Take notice that on November 3, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff) for New York State Electric & Gas Corporation (NYSEG). Boston Edison requests that the Service Agreement become effective as of October 1, 1997.

Edison states that it has served a copy of this filing on NYSEG and the Massachusetts Department of Public Utilities.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–508–000]

Take notice that on November 3, 1997, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service under the Pennsylvania Retail Pilot with West Penn Power dba/ Allegheny Power, PP&L, Inc., Horizon Energy, and Penn Power Energy pursuant to Ohio Edison's Open Access Tariff. These Service Agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER98–509–000]

Take notice that on November 3, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff. The Transmission Tariff has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after October 4, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER98–510–000]

Take notice that on November 3, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the service agreements to be made effective for service billed on and after October 4, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER98–512–000]

Take notice that on November 3, 1997, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service with American Electric Power Service Corporation, Electric Clearinghouse, Inc., Public Service Electric & Gas Company, Constellation Power Source, Inc., The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., and Duke Power, a division of Duke Energy Corporation under the Open Access Transmission Tariff to Eligible Purchasers dated July 9, 1996. Under the tendered Service Agreement Virginia Power will provide firm point-to-point service to the Transmission Customers as agreed to by the parties under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon American Electric Power Service Corporation, Electric Clearinghouse, Inc., Public Service Electric & Gas Company, Constellation Power Source, Inc., The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc., Duke Power, a division of Duke Energy Corporation, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Interstate Power Company

[Docket No. ER98–513–000]

Take notice that on November 3, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Enron Power Marketing, Inc., (Enron). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Enron.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Interstate Power Company

[Docket No. ER98–514–000]

Take notice that on November 3, 1997, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Tenaska Power Services Company (Tenaska). Under the Transmission Service Agreement, IPW will provide non-firm point-to-point transmission service to Tenaska.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. South Carolina Electric & Gas Company

[Docket No. ER98–515–000]

Take notice that on November 3, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Delmarva Power & Light Company (DP&L) and Florida Power Corporation (FPC), as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon DP&L, FPC and the South Carolina Public Service Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Illinois Power Company

[Docket No. ER98–516–000]

Take notice that on November 3, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which The Energy Authority will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 15, 1997.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Illinois Power Company

[Docket No. ER98–517–000]

Take notice that on November 3, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Oglethorpe Power Corporation will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 22, 1997.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas Company

[Docket No. ER98–518–000]

Take notice that on November 3, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing PECO Energy Company (PECO) and Tennessee Valley Authority (TVA), as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon PECO, TVA and the South Carolina Public Service Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER98–519–000]

Take notice that on November 3, 1997, Western Resources, Inc., tendered for filing a firm transmission agreement between Western Resources and Utilicorp d.b.a. Missouri Public Service. 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 28, 1997.

Copies of the filing were served upon Utilicorp dba Missouri Public Service and the Kansas Corporation Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER98–520–000]

Take notice that on November 3, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and PacifiCorp Power Marketing Inc. 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 29, 1997.

Copies of the filing were served upon PacifiCorp Power Marketing Inc., and the Kansas Corporation Commission.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Florida Power Corporation

[Docket No. ER98–521–000]

Take notice that on November 3, 1997, Florida Power Corporation (FPC), tendered for filing three separate service agreements between FPC and SCANA Energy Marketing, Inc., Oglethorpe Power Corporation, and Williams Energy Services Company for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume No. 8. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement with SCANA Energy Marketing, Inc. is proposed to be effective October 29, 1997; the service agreement with Oglethorpe Power Corporation is proposed to be effective October 28, 1997; and the service agreement with Williams Energy Services Company is proposed to be effective October 17, 1997.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Boston Edison Company

[Docket No. ER98–524–000]

Take notice that on November 3, 1997, Boston Edison Company (Boston Edison), filed under Section 205 of the Federal Power Act an Interconnection and Operation Agreement (I&O Agreement) that Boston Edison will enter into in connection with voluntary divestiture of its fossil generation business under a Settlement Agreement filed on July 8, 1997, in restructuring proceedings before the Massachusetts Department of Public Utilities in Docket DPU 96–23.

Boston Edison requests the Commission to allow the I&O Agreement to become effective 60 days from the date of this filing, on January 3, 1998.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Duquesne Light Company

[Docket No. ER98–526–000]

Take notice that on November 4, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 28, 1997, with CNG Retail Services Corporation under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds CNG Retail Services Corporation as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Duquesne Light Company

[Docket No. ER98–527–000]

Take notice that on November 4, 1997, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 29, 1997, with Energis Resources Incorporated under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Energis Resources Incorporated as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–528–000]

Take notice that on November 4, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Horizon Energy Company (HEC), dated October 21, 1997. This Service Agreement specifies that HEC has agreed to the rates, terms and conditions of GPU Energy's Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co., and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU Energy and HEC to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 21, 1997, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power & Light Company

[Docket No. ER98–529–000]

Take notice that on November 4, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with NIPSCO Energy Services, Inc., for Firm Short-Term transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed cancellation be permitted to become effective on November 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power & Light Company

[Docket No. ER98–531–000]

Take notice that on November 4, 1997, Florida Power & Light Company, filed a letter notice dated September 26, 1997, from Florida Keys Electric Cooperative Association, Inc., to FPL. This letter contains information provided pursuant to Section 11.1 of the Long Term Agreement to Provide Capacity and Energy by Florida Power & Light Company to Florida Keys Electric Cooperative Association, Inc., dated August 15, 1991. FPL requests that the proposed notice be made effective January 1, 1998.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. Northeast Utilities Service Company

[Docket No. ER98–532–000]

Take notice that on November 4, 1997, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with the New York State Electric & Gas Corporation under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the New York State Electric & Gas Corporation.

NUSCO requests that the Service Agreement become effective November 1, 1997.

Comment date: December 5, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. California Independent System Operator Corporation

[Docket No. ES98–9–000]

Take notice that on November 17, 1997, the California Independent System Operator Corporation (ISO) tendered for filing an Application under Section 204 of the Federal Power Act for authorization to issue securities and for certain waivers of Part 34 requirements.

The ISO requests authorization (1) to issue promissory notes to the ISO Restructuring Trust (ISO Trust) in exchange for the ISO's assets and for working capital; (2) to issue long-term bonds; and (3) for other evidences of indebtedness to be used for general corporate purposes.

Comment date: December 16, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. California Power Exchange Corporation

[Docket No. ES98–10–000]

Take notice that on November 17, 1997, the California Power Exchange Corporation (PX) tendered for filing an Application under Section 204 of the Federal Power Act for authorization to issue securities and for certain waivers of Part 34 requirements.

The PX requests authorization (1) to issue promissory notes to the PX Restructuring Trust (PX Trust) in exchange for PX's assets and for working capital; (2) to other evidences of indebtedness to be used for general Corporate purposes.

Comment date: December 16, 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. 97–31378 Filed 11–28–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: November 21, 1997, 62 FR 62299.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 25, 1997, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number and Company has been added as Item CAG–1 on the Agenda scheduled for the November 25, 1997 meeting.

Item No.	Docket No. and company
CAG–1	RP96–312–000, Tennessee Gas Pipeline Company.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31540 Filed 11–26–97; 1:06 pm]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of September 8 Through September 12, 1997

During the week of September 8 through September 12, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 20, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 50; Week of September 8 Through September 12, 1997

Appeals

Bruce Darrow Gaither, 9/8/97; VFA–0324

The Department of Energy denied a Freedom of Information Act Appeal filed by Bruce Darrow Gaither. In his Appeal, Gaither contested the adequacy of the search for responsive documents performed by the DOE's Freedom of Information and Privacy Act Division. After reviewing the scope of the search, the DOE concluded that the search was adequate.

Greenpeace USA, 9/11/97; VFA–0311

Greenpeace USA appealed a Determination issued to it in response to a request made under the Freedom of Information Act (FOIA) for information on contracts for technical assistance that DOE's Idaho Operations Office (ID) provided to California in the development of new commercial low-level radioactive waste management systems. ID withheld some documents under Exemptions 3, 4, and 6 of the FOIA. Material withheld under Exemption 3 was categorized as exempt under the National Defense Authorization Act of 1997 (NDAA), which generally prohibits the release of proposals. The DOE found on Appeal that some of the withheld material did not meet the NDAA's requirement of a solicitation for a competitive proposal. In addition, the DOE found that some material withheld was non-exempt. Accordingly, the Appeal was granted in part and the case was remanded to ID for further action.

Janice C. Curry, 9/9/97; VFA–0313

The DOE granted an Appeal by a former DOE contractor employee for documents related to her employment. The DOE found that the Office of Environmental Management (EM) did not adequately address the basis for its withholding of information under FOIA Exemption 6, and that EM's search for responsive documents was inadequate. The matter was, therefore, remanded to EM.

Ralph C. Elkins, 9/12/97; VFA–0317

Ralph C. Elkins appealed a denial by the Freedom of Information and Privacy Act Division of a request for his security clearance file that he submitted under the Privacy Act. The FOIA Division had not found the requested file. In considering the Appeal, the DOE found that the FOIA Division had conducted an adequate search for responsive documents, and it accordingly denied the Appeal.

Personnel Security Hearing

Personnel Security Hearing, 9/10/97; VSO–0151

A Hearing Officer issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found the individual had harassed his ex-spouse and three co-workers and that this conduct, as specified by Criterion L, indicated that he may not be honest, reliable or trustworthy or may be subject to pressure, coercion, exploitation or duress. The Hearing officer found that the individual had engaged in a number of harassing acts towards his ex-spouse and three co-workers and that he had not demonstrated sufficient evidence of reformation. The Hearing officer also found that the individual had been diagnosed by a psychiatrist as suffering from mixed personality disorder and depressive disorder and that in the psychiatrist's opinion these illnesses could cause a significant defect in judgment and reliability, as specified by Criterion H. Although the individual presented witnesses testifying that he did not exhibit the personality characteristics described by the DOE psychiatrist, the Hearing Officer concluded that he had not presented sufficient evidence to warrant rejection of the psychiatrist's opinion. Given the above findings, the Hearing Officer recommended that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Buttler County Commission, et al: RF272–76385, 9/10/97

Crude Oil Ref. Dist.: RB272–00117, 9/11/97

Empire Gas Corp./Howe Laundry: et al: RF335–00001, 9/12/97

Estate of Victor G. Zonver et al: RK272–01788, 9/11/97

Godwin Constsruction Co. et al: RF272–98611, 9/11/97

Worley's Asphalt & Paving Co. et al: RK272–04466, 9/11/97

Dismissals

The following submissions were dismissed.

American Building Components Co., Case No. RF272–57013

Arka, Inc., Case No. RF272–94509

Damar Worldwide, Inc., Case No. VEE–0048

Houston Slag Materials Company, Case No. RK272–04476

Midwest Paving Company, Case No. RG272–00836

[FR Doc. 97–31386 Filed 11–28–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5930–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plan

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 EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Oil and Hazardous Substances Pollution Contingency Plan, EPA ICR No. 1463.03, OMB No. 2050–0096, expiring on January 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 30, 1998.

ADDRESSES: Community Involvement and Outreach Center, Office of Emergency and Remedial Response, 401 M Street, SW, Washington, DC 20460, Mail Code: 5204–G, 703–603–8889. Persons interested in obtaining a copy of the ICR without charge may call the telephone number above to request a free copy.

FOR FURTHER INFORMATION CONTACT: Lois Gartner, telephone number: 703–603–8889, facsimile number: 703–603–9100, e-mail address: gartner.lois@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those states and members of the public that

voluntarily participate in the remedial phase of the Superfund process and those members of the public that voluntarily participate in community involvement activities during some or all phases of the Superfund process.

Title: National Oil and Hazardous Substances Pollution Contingency Plan (OMB Control No. 2050–0096, EPA ICR No. 1463.03) expiring on January 31, 1998.

Abstract: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund; 42 U.S.C. 9601 *et seq.*), as amended, establishes broad Federal authority to undertake removal and remedial actions in response to releases or threats of releases of hazardous substances and certain pollutants and contaminants into the environment. The NCP sets forth requirements for carrying out the response authorities established under CERCLA. In addition, the Government Performance and Results Act of 1993 requires EPA to determine and report to Congress on its effectiveness, including community involvement activities.

For states, this ICR addresses the record keeping and reporting provisions of the NCP that affect those states that voluntarily participate in the remedial phase of the Superfund program. (Record keeping and reporting requirements of the pre-remedial phase—except those tied to community involvement—have been addressed in the ICR prepared for the revisions to the Hazard Ranking System (HRS) (OMB Control No. 2050–0095). Record keeping and reporting provisions for the removal program—except, again, those tied to community involvement—also are not included in this ICR because the Federal government has the lead for removal actions.) Remedial responses under the Superfund program fall into the pre-remedial phase (during which the extent of site contamination is assessed) and the remedial phase (during which investigations are conducted to identify and characterize contaminants present and to determine viable remedies for a site, the remedy is chosen and the cleanup or construction is completed). The NCP includes the following reporting and record keeping provisions for the remedial phase of the Superfund program:

(1) States that voluntarily take the lead in remedial activities at Superfund sites must conduct the activities in a manner consistent with CERCLA (40 CFR 300.515(a)). Therefore, at a state-led site, the state must: develop a Remedial Investigation and Feasibility Study (RI/FS); prepare a Proposed Plan; issue a Record of Decision (ROD); complete community interviews; prepare a Community Involvement Plan (CIP), and provide information to the public; and

(2) States must identify and communicate potential state applicable or relevant and appropriate requirements (ARARs) at all Superfund sites within the state (40 CFR 300.400(g)).

In addition, this ICR addresses the record keeping and reporting provisions of the NCP that affect communities voluntarily providing their concerns to the lead agency about the Superfund process. This ICR also addresses the record keeping and reporting provisions imposed on communities when those communities provide feedback on community involvement activities tied to GPRA. Community involvement related to NCP requirements and GPRA reporting may occur during all phases of the Superfund process including, pre-remedial, remedial, removal (short-term response actions), and operation and maintenance (which may include such activities as ground water and air monitoring, inspection and maintenance of the treatment equipment remaining on site, and maintenance of any security measures or institutional controls.) Specifically, members of the community surrounding a Superfund site may participate in community interviews (40 CFR 300.43(c)) conducted by EPA in order to prepare a CIP or serve on Technical Assistance Grant (TAG) groups, as provided for in Superfund Amendments and Reauthorization Act (SARA) of 1986, as well as in Community Advisory Groups (CAG), as provided in Superfund Administrative Reforms. Community groups focused on the technical assistance provided through the Technical Outreach Services for Communities (TOSC) program may also participate. Participation may also take the form of attending informal and formal meetings, open houses and public availability sessions, responding to questionnaires and telephone interviews, and/or participation in focus groups.

EPA uses the information provided by the states to ensure state actions are consistent with the provisions of CERCLA and SARA and that their decisions are protective of human health and the environment. EPA uses the information gathered from private citizens to plan activities geared to educating them where necessary, keeping them informed of activities within the community, and ensuring they have had an opportunity to assume an active role in the decision making process that affects their community. EPA also uses information from private citizens to measure the effectiveness of community involvement activities, as required by GPRA, and to improve those activities as needed. EPA believes involvement of the members of the community surrounding a Superfund site is critical to ensuring effective site cleanups.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA estimates that 30 new sites will be added to the NPL each year over the three-year period of this ICR. Of those 30 sites, EPA estimates six will be state-led cleanups. It is estimated that states will incur an annual burden of 6,026 hours per site, for a cost of $178,100, of which $178,011 is reimbursed by EPA. States are reimbursed from the CERCLA Hazardous Susbstances Trust Fund (the Fund) for state-led activities via cooperative agreements with EPA as provided in CERCLA section 104(d)(1). States are not reimbursed from the Fund for identification of state ARARs. It is also estimated that communities will incur a collective annual burden of 539 hours per site, for a cost of $16,062 (assuming the value of their time at $29.57) or an estimated average annual burden of 11 hours per person. While EPA does not reimburse community members for their participation, this ICR nonetheless estimates the monetary value of burden their participation imposes on them.

The burden data in this section are based on estimates by EPA personnel knowledgeable of the remedial program's record keeping and reporting requirements and the costs and level of effort required to meet the requirements.

Estimated Unit Burdens to State Governments

A ''unit'' burden is the burden incurred by a respondent for performing an individual site-specific activity. States incur burdens at: (1) An estimated six new state-led sites per year for several reporting and record keeping activities; and (2) all of the estimated 30 NPL sites on an annual

basis with RI/FS starts for identifying and reporting ARARs.

The burden is calculated using a weighted average hourly rate of $29.57 multiplied times the number of hours to undertake a given activity. For purposes of this ICR, wage rates for state government personnel are estimated to be comparable to those for Federal government personnel. Labor rates for government workers reflect the median GS level salaries for managerial, technical and clerical positions. These rates include direct salary and fringe benefits (calculated at 60 percent of direct salary). The hourly rates, as of November 1997, are:

Management (GS 13, Step 1): $42.01/hour
Technical (GS 11, Step 1): $29.48/hour
Clerical: $17.92/hour

Based on these assumptions, the weighted hourly wage rate for state and Federal personnel is $29.57 [(0.1)*(42.01) +(0.8)*(29.48)+ (0.1)*(17.92)].

At a state-led site, states incur a burden for the following activities:

- Development of the RI/FS—5,200 hours/yr/site, $153,764.
- Development of the Proposed Plan—160 hours/yr/site, $4,731.
- Preparation of the ROD—360 hours/yr/site, $10,645.
- Development of the CIP—150 hours/yr/site, $4,435.
- Providing information to the public—153 hours/yr/site, $4,524.

At all sites, states incur a unit burden of three hours per site per year, or a cost of $88.71, for providing information on state ARARs.

Estimated Unit Burdens to Community Members

During their participation in the Superfund process, community members may perform any or all of the following activities (as with burden estimates for state activities, an hourly rate of $29.57 is used to estimate the value of community members' time):

- Participate in interviews—20 hours/yr/site, $591.
- Attend informal and formal meetings, open houses, and public information availability sessions—240 hours/yr/site, $7,096.
- Participate in community groups—160 hours/yr/site with such groups. $4,731.
- Respond to surveys—47 hours/yr/site, $1,389.
- Participate in focus groups—72 hours/yr/site with such groups, $2,129.

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 EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Please send comments to the address appearing in the **ADDRESSES** segment of this document.

Dated: November 20, 1997.

Elaine F. Davies,

Deputy Director, Office of Emergency and Remedial Response.

[FR Doc. 97–31405 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5930–4]

Agency Information Collection Activities: Continuing Collection; Comment Request; Registration of Fuels and Fuel Additives—Health-effects Research Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers (EPA ICR Number 1696.02, OMB Control Number 2060–0297, expiration date: 1–31–98). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 30, 1998.

ADDRESSES: Fuels and Energy Division, Office of Mobile Sources, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, Washington, DC 20460. A paper or electronic copy of the ICR may be obtained without charge by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, (202) 564–9303, fax: (202) 565–2085, caldwell.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacture or import gasoline or diesel fuel, or manufacture or import an additive for gasoline or diesel fuel.

Title: Registration of Fuels and Fuel Additives: Health-effects Research Requirements for Manufacturers

OMB Control Number 2060–0297
EPA ICR Number 1696.02
Expiring: 1–31–98

Abstract: In accordance with the regulations at 40 CFR 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of gasoline and diesel fuel, and manufacturers (including importers) if additives for gasoline or diesel fuel, are required to have their products registered by EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR 79, subpart F, is the subject of this ICR. The information collection requirements for subparts A through D, and the supplemental notification requirement of Subpart F (indicating how the manufacturer will satisfy the research requirements) are covered by a separate ICR (EPA ICR Number 309.09, OMB Control Number 2060–1050). The health-effects information will be used to determine if there are any products whose evaporative or combustion emissions pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, all gasolines and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen, and/or sulphur, and which involve a gasoline oxygen

content of less than 1.5 weight percent, fall into a ''baseline'' group. Oxygenates, such as ethanol and methyl tertiary butyl ether (MTBE), when used in gasoline at oxygen levels of at least 1.5 weight percent, define separate ''nonbaseline'' groups. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and/or sulphur fall into separate ''atypical'' groups. There are similar grouping requirements for diesel fuels and additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline and nonbaseline gasolines, diesel fuels, and additives. The research is structured into three tiers of requirements for each group. Tier 1 requires a health-effects literature search and emissions characterization. Voluminous Tier 1 data were submitted by API and others in 1997. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Alternative Tier 2 testing can be required in lieu of the standard Tier 2 if EPA concludes that such testing would be more appropriate. The EPA has reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and the API consortium has been notified. However, the alternative requirements have not been finalized, and thus are not part of this ICR. A similar situation exists with the Ethyl Corporation and its manganese additive MMT. This ICR will be amended once those requirements are finalized. The API submitted Tier 2 data for diesel in 1997. Tier 3 provides for follow-up research, if necessary. No Tier 3 requirements have been established, and it is unlikely that any will be during the next three years. Thus, Tier 3 is not addressed in this ICR. 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 EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: There are approximately 100 fuel manufacturers, 1300 additive manufacturers, 800 registered fuels, and 6000 registered additives. Due to the costs, it is likely that only limited additional Tier 1 research will be done. Future fuels and additives will almost exclusively be those that can group with existing Tier 1 data, and likely will come from manufacturers that have already paid for the Tier 1 research. It is estimated that new Tier 1 research will cost $500,000 per product, and that there will be only one Tier 1 submission over the next three years. Standard Tier 2 activity also will be very limited. The EPA has concluded that existing data cover Tier 2 for baseline diesel. Alternative Tier 2 requirements for baseline gasoline, the six major nonbaseline gasoline oxygenates, and the atypical gasoline additive MMT, are not covered by this ICR. It is estimated that new Tier 2 research will cost $500,000 per product, and that there will only be one Tier 2 submission over the next three years. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: November 24, 1997.

Charles N. Freed,

Director, Fuels and Energy Division.

[FR Doc. 97–31407 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5928–3]

Sole Source Aquifer Designation of the Guemes Island Aquifer System; Skagit County, Washington

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act, and in response to a petition from the Guemes Island Property Owners Association, the U.S. Environmental Protection Agency (EPA) Region 10 Administrator has determined that the Guemes Island aquifer system, in Skagit County, Washington, is a sole or principal source of drinking water, and that if contaminated, would create a significant hazard to public health. As result of this action, all Federal financially-assisted projects proposed over the designated aquifer system will be subject to EPA review to ensure that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be effective for purposes of judicial review at 1:00 p.m. Eastern time on December 15, 1997.

ADDRESSES: The information upon which this determination is based is available to the public and may be inspected during normal business hours at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Scott E. Downey, Environmental Protection Specialist, Ground Water Protection Unit, OW–137, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, 206–553–0682.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), Public Law 93–523, states:

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a

commitment for Federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On August 1, 1994, EPA Region 10 received a petition from the President of the Guemes Island Properties Association requesting that EPA designate the Guemes Island aquifer system as a sole source aquifer (SSA). The petition expressed several reasons for interest in a designation, including concern that an increasing island population could adversely affect both ground water quality and quantity due to impacts from logging, road building, and onsite septic systems on aquifer recharge areas, and from the impact of ground water withdrawals from new wells; a desire to raise public awareness about the vulnerability of the aquifer system; a desire to raise awareness about existing and future problems of the water supply to Skagit County government; and the value of SSA status in future grant applications for further study of the island's ground water.

A detailed review of the petition by EPA was delayed for about three years due to work on an earlier designation request. In July of 1997, the Guemes Island review was completed and the area appeared to meet all criteria for SSA designation. The legal and technical basis for the proposal was outlined in an EPA publication titled: ''Support Document for Sole Source Aquifer Designation of the Guemes Island Aquifer System,'' EPA 910/R–97–006.

II. Basis for Determination

Among the factors to be considered by EPA in connection with the designation of an area under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water; and (2) whether contamination of the aquifer would create a significant hazard to public health.

EPA Region 10 has further interpreted the statutory language so that ''sole or principal'' means that the aquifer must supply at least 50 percent of the drinking water for the area. Furthermore, there should be no alternate drinking water source(s) which can physically, legally, and economically supply all those who depend upon the aquifer for drinking water, should it become contaminated. In addition, aquifer boundaries should be delineated based on sound hydrogeologic principles and the best available scientific information.

Although designation determinations are largely based on science-based criteria, the Regional Administrator may also consider the overall public interest and net environmental and public health benefits in making a sole source aquifer determination.

On the basis of information available to this Agency, the Region 10 Administrator has made the following findings:

(1) The aquifer system is the principal source of drinking water (close to 100%) for people on the island and there are no alternate sources which can physically, legally, and economically supply all those who depend upon the aquifer for drinking water, should it become contaminated. Potential alternate sources considered include surface water, water piped in from the mainland, bottled water, rainwater catchment, and reverse osmosis of seawater. None of these drinking water sources are considered by EPA to be feasible replacements for the entire aquifer system due to economic barriers or because these sources are not consumed or utilized for domestic purposes in significant quantities.

(2) Contamination of the aquifer system would create a significant hazard to public health. The aquifer system is vulnerable to contamination through its recharge zones from various sources and activities including onsite septic systems, stormwater runoff, animal wastes, and pumping wells which can cause intrusion of seawater into freshwater aquifers. Scientific information indicates there is a hydrogeologic interconnection between the aquifers underlying the island, and collectively, they may be considered as a single aquifer system. Because they are interconnected, there is the potential for cross- contamination from one aquifer to another.

Because the aquifer system is vulnerable to contamination and restoring ground water quality can be difficult or even impossible; and because the aquifer system is the principal source of drinking water for the area and there are no other sources which can economically supply all those who depend upon it for drinking water; EPA believes that contamination of the aquifer system would pose a significant hazard to public health.

These findings are based on information from various sources including the petition, EPA guidances, a U.S. Geological Survey report, public comments, the Skagit County Health Department, and the Washington State Department of Health.

III. Description of the Guemes Island Aquifer System

The following is a summary of information from the Support Document available upon request from EPA Region 10. Much of the hydrogeological information in the Support Document is taken from the petition and from ''Hydrogeology and Quality of Ground Water on Guemes Island, Skagit County, Washington,'' U.S. Geological Survey (USGS) Water-Resources Investigations Report 94–4236, by Kahle and Olsen, 1995.

Guemes Island is a small island in Puget Sound, located north of the City of Anacortes in the western part of Skagit County, Washington. The total area of the island is approximately 8.2 square miles. The year-round population of the island is approximately 540, with a summer population which nears 2,200. The southeastern part of the island is hilly and composed of bedrock and fractured rock; the remainder is gently rolling and overlain by glacial drift.

There are eight distinct geologic units present on Guemes Island: consolidated bedrock, glacial deposits comprised of the Double Bluff Drift, Whidbey Formation, Vashon advance outwash, Vashon till, and Everson drift, and more recent units composed of peat and beach deposits. There is considerable variation in the thickness of individual units, and not all units are necessarily present at any one location. Glacial and recent deposits are at the land surface over most of the island, with bedrock exposed only on the southeastern end of the island. Highly permeable units within the glacial deposits also function as the main aquifers under the island. These units are hydraulically connected and thus perform as an aquifer system.

Ground water quality on Guemes Island is considered to be generally of good quality. The aquifer system underlying the island is considered to be vulnerable to contamination due to the highly heterogeneous nature of the sand and gravels making up the aquifers, and the inconsistent confining nature of the surficial confining unit and the Whidbey confining unit. Chlorides and nitrates are the contaminants of the most concern. High chloride concentrations in well water on the island are due to either the presence of relict seawater in aquifer materials, or seawater moving inward from Puget Sound (seawater intrusion). Excessive ground water withdrawal in a near-shore area can cause large local movement of the freshwater-seawater interface especially if the aquifer is thin. Nitrates in ground water can originate from septic tanks, animal wastes, and fertilizer.

The Guemes Island SSA boundaries are representative of an aquifer system that encompasses the entire Guemes

Island area. The aquifer system is bounded on all sides by Puget Sound. The vertical extent of the aquifer system at depth includes all potable water-bearing geologic units underlying the island, including both the unconsolidated glacial deposits and the bedrock unit. Please see the Support Document for a more detailed hydrogeologic description.

IV. Project Reviews

The Safe Drinking Water Act authorizes EPA to review proposed Federal financially-assisted projects which have the potential to contaminate a designated SSA. Federal assistance may be denied if EPA determines that a project may contaminate the SSA through its recharge zone so as to create a significant hazard to public health. Outright denial of Federal funding is rare as most projects pose limited risk to ground water quality or can be feasibly modified to prevent ground water contamination. Proposed projects that are funded entirely by state, local, or private concerns are not subject to SSA review by EPA.

EPA does not review all possible Federal financially-assisted projects, but tries to focus on those projects which pose the greatest risk to public health. Memorandums of Understanding have been developed between EPA and various Federal funding agencies to help identify, coordinate, and evaluate projects. EPA relies to the maximum extent possible on existing local and state mechanisms to protect SSAs from contamination. Whenever feasible, EPA coordinates project reviews with local and state agencies that have a responsibility for ground water protection. Their comments are given full consideration in the Federal review process.

V. Public Participation and Response to Comments

The following is a summary of information from the ''Response to Public Comments for the Guemes Island Sole Source Aquifer Proposal'' available upon request from EPA Region 10.

EPA used various methods to notify and involve the public and others in the Guemes Island SSA designation process. The outreach effort included briefings to local and State government, distribution of EPA facts sheets, placing information in local libraries, a public advertisement in the local newspaper, and providing information for several newspaper and newsletter articles.

A public comment period was in effect from August 27 to October 11, 1997, and a public meeting was conducted on the island by EPA staff on September 19, 1997. The purpose of the meeting was to present information about the proposal, answer any questions, and take public comments directly from the island community or other interested parties. About 40 people attended the meeting. Written comments were accepted on the proposal until the end of the public comment period. All comments were reviewed and considered by EPA, but did not lead to any changes to EPA's determination that Guemes Island qualifies for SSA status.

During the comment period, EPA received fourteen written comments in the mail and ten oral comments at the public meeting. Of the written comments, ten persons expressed support for the designation, while four opposed it. Formal comments at the public meeting were evenly split with five persons supporting the designation and five opposed. Individuals submitted most of the comments, but a community organization and a State agency also commented.

The primary reason given for supporting the proposed action was a belief that the designation would increase protection of the island—s ground water. Many cited the educational benefit that SSA status would have on island residents and on Skagit County government on the source of the island's drinking water, its value and vulnerability, and the need for protection and conservation. Some people commented that protection of the island's ground water was important because there are no feasible alternate sources of drinking water. Some people felt that ground water would be better protected because of additional environmental review of proposed projects, or because it could hinder the siting of future landfills on the island. Some supported the designation because they felt that added protection of the island's drinking water could help to protect property values.

Several people opposed the designation because they did not want an increase of Federal involvement in local affairs. In response, the SSA program can increase Federal involvement, but only in a very limited way—if Federal assistance is proposed for a project, EPA can review the proposal and ask for changes if drinking water supplies are endangered. This review process is meant to support and enhance, rather than duplicate or supplant, local ground water protection measures. Many communities welcome the technical assistance and coordinating services they receive from EPA to protect their drinking water.

Some people commented that the designation would not contribute to further ground water protection. In response, the SSA program is not intended to be a comprehensive ground water protection program. EPA authority is limited to the review of Federal projects, which are likely to be minimal in number and scope for the island. However, there are many other benefits from an SSA designation, that can be locally-driven, such as greater awareness and stewardship of a community's drinking water supply. This can lead to an increase of both individual and local governmental actions to protect the resource.

Two persons commented that SSA designation was unnecessary because the island's ground water was not already contaminated. In response, the SSA program is a pollution prevention program. Experience has shown that it is much smarter, and considerably less expensive, to prevent ground water pollution in the first place, rather than trying to clean up a degraded water supply after a problem is discovered.

Two persons objected to the designation because they believed that the petitioner had requested a part of the island be excluded from the designated area. In response, the original petition correctly identified that at least one portion of the island (a bedrock tip area that discharges ground water to Puget Sound) could be viewed as a hydrogeologically separate part of the island. However, the petition specifically requested that the entire island be designated as a sole source aquifer. EPA concurred that it made better technical and programmatic sense to designate the entire island.

One person raised questions on the technical basis for the designation, claiming that the extent and accuracy of the data used in the petition and in EPA's Support Document was lacking and flawed. In response, EPA used the best available scientific information and best professional judgement and believes that the technical basis for the designation is based on sound hydrogeologic principles.

VI. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this final determination will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the ''small entity'' shall have the same meaning as given in section 601 of the RFA. This action is only applicable to Guemes Island.

The only affected entities will be those businesses, organizations, or

government jurisdictions that request Federal financial assistance for projects which have the potential for contaminating the aquifer system so as to create a significant hazard to public health. EPA does not expect to review small isolated commitments of Federal financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated. Accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact of today's action will not be significant. Major projects subject to this review will be proceeded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, *et seq.* Integration of those related review procedures with SSA review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of a project to assure protection of the aquifer system.

Under Executive Order 12866, EPA must judge whether a regulation is ''major'' and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increases in costs or prices, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets.

VII. Summary

This determination affects only the Guemes Island aquifer system located in Skagit County, Washington. As a result of this determination, all Federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

Dated: November 18, 1997.

Chuck Clarke,

Regional Administrator,U.S. Environmental Protection Agency, Region 10.

[FR Doc. 97–31273 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5930–5]

Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: On September 11, 1995 (60 FR 47172), the EPA announced the establishment of the Ozone, Particulate Matter and Regional Haze Implementation Programs Subcommittee under the Clean Air Act Advisory Committee (CAAAC). The CAAAC was established on November 8, 1990 (55 FR 46993) pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. app I). The purpose of the Subcommittee is to provide advice and recommendations on integrated approaches for implementing potentially new national ambient air quality standards (NAAQS) for ozone and particulate matter, as well as a regional haze program.

DATES: Open Meeting: Notice is hereby given that the Subcommittee for Ozone, Particulate Matter and Regional Haze Implementation Programs will hold its next public meeting on Wednesday, December 17, 1997 (from 9:00 a.m. to 5:30 p.m.) and Thursday, December 18, 1997 (from 9:00 a.m. to 1:00 p.m.).

ADDRESSES: The public meeting will be held at the New Orleans Hilton Riverside, Poydras at the Mississippi River, New Orleans, Louisiana, telephone: (504) 561–0500.

FOR FURTHER INFORMATION CONTACT: For further information on the Subcommittee for Ozone, Particulate Matter and Regional Haze Implementation Programs, please contact Mr. William F. Hamilton, Designated Federal Officer, at 919–541–5498, or by mail at U.S. EPA, Office of Air Quality Planning and Standards, MD–15, Research Triangle Park, NC 27711. When a draft agenda is developed, a copy can be downloaded from the: (1) Ozone/Particulate Matter/Regional Haze FACA Bulletin Board, which is located on the Office of Air Quality Planning and Standards Technology Transfer Network (OAQPS TTN); (2) the OAQPS TTN Web Site (http://www.epa.gov/ttn); or (3) by contacting Ms. Denise M. Gerth at 919–541–5550.

Dated: November 21, 1997.

Henry Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 97–31406 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400121; FRL–5760–1]

Emergency Planning and Community Right-To-Know; Availability of Guidance Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has prepared several documents to assist industries to understand their compliance responsibilities in association with section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). One of the documents being made available today is a revision to the EPCRA section 313 Questions and Answers document, which provides guidance to commonly asked interpretive questions. In addition to this document, several industry-specific guidance documents have been developed for facilities in industry groups recently added to the list of industries covered under EPCRA section 313. These documents are intended to assist these recently added industries understand requirements under EPCRA section 313 and more easily determine if their facility is likely to have any reporting responsibilities. The industry-specific guidance documents for the recently added industry groups are intended for use for activities beginning on January 1, 1998, with reports due on or before July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Tim Crawford, 202-260-1715, e-mail: crawford.tim@epamail.epa.gov, for specific information regarding the industry-specific guidance documents or Sara Hisel McCoy, 202-260-7937, e-mail: hisel-mccoy.sara@epamail.epa.gov, for questions related to the Questions and Answers document. To receive a copy of these documents, please access EPA's Internet site at the following address: www.epa.gov/opptintr/tri, or you may contact the EPCRA Hotline and request a copy at Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll Free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll Free TDD: 1-800-535-7672.

SUPPLEMENTARY INFORMATION: A final rule adding certain industry sectors to the current list of facilities required to report under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as the Toxics Release Inventory (TRI) was published on May 1, 1997 (62 FR 23833) (FRL–5578–3). This action added certain facilities in the following seven industry groups: Metal Mining (SIC code 10); Coal Mining (SIC code 12); Electric Utilities (SIC codes 4911, 4931, 4939 each limited to facilities which combust coal and/or oil for purposes of generating power for distribution); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products-Wholesale (SIC code 5169); Petroleum Bulk Terminals and Plants (SIC code 5171); and Solvent Recovery Services (SIC code 7389). EPA has prepared guidance documents for each of these industry groups to assist them with determining their compliance requirements for activities beginning on January 1, 1998.

These documents were made available in draft form for public review and comment through a notice in the **Federal Register** (62 FR 37053) (FRL–5727–6). Several comments were received and many of the issues raised have been addressed in the documents being made available today. EPA also intends to issue an addendum to accompany these documents which will address many of the issues raised during the recent training sessions offered to the new industry groups along with some of the issues raised during the comment period which were not incorporated in the body of the documents themselves.

In addition, the 1997 version of the ''EPCRA Section 313 Questions and Answers'' document updates and significantly expands the 1990 version of the document. This updated document addresses various EPCRA section 313 interpretive guidance questions on various topics such as threshold determinations, waste management calculations and the Form A. In addition, the Questions and Answers document addresses questions on the revised interpretation of the term ''otherwise use'' and recent toxic chemical listing modifications. To make the document more user friendly, the Agency has added a glossary of relevant terms and an expanded key word index.

Dated: November 24, 1997.

Christine Augustyniak,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–31414 Filed 11–28–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, November 25, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Ms. Judith A. Walter, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Joseph H. Neely (Appointive) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: November 25, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–31499 Filed 11–26–97; 10:44 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 a.m.—December 4, 1997.

PLACE: 800 North Capitol Street, N.W.—Room 904, Washington, D.C.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: 1. Docket No. 89–26—The Government of the Territory of Guam v. Sea-Land Service, Inc. and American President Lines, Ltd.—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 97–31529 Filed 11–26–97; 11:27 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 3, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 26, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31530 Filed 11–26–97; 11:28 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Cooperative Agreement With the National Hispanic Religious Leaders Partnership for Community Health

The Office of Minority Health (OMH), Office of Public Health and Science, announces that it will enter into an umbrella cooperative agreement with The National Hispanic Religious Leaders Partnership for Community Health (NHLRPCH). This cooperative agreement will establish the broad programmatic framework in which specific projects can be funded as they are identified during the project period.

The purpose of this cooperative agreement is to assist NHLRPCH to expand and enhance its activities relevant to health issues affecting the Hispanic community in areas such as access to health care, cultural competency, mental health, child abuse and youth health issues, substance abuse and prevention, and disease prevention/health promotion. It is anticipated that future activities will focus on programs and policies aimed at improving the overall health status of Hispanics in order to eliminate the health gaps which exist between Hispanics and others. OMH will provide consultation, including administrative and technical assistance as needed, for the execution and evaluation of all aspects of this cooperative agreement. OMH will also participate and/or collaborate with the awardee in any workshops or symposia to exchange current information, opinions, and research findings during this agreement.

Authorizing Legislation

This cooperative agreement is authorized under Title XVII, Section 1707(d)(1) of the Public Health Service Act, as amended by Public Law 101–527.

Background

Assistance will be provided only to the National Hispanic Religious Leaders Partnership for Community Health. No other applications are solicited. NHLRPCH is the only organization capable of administering this cooperative agreement because it:

1. Established a regional and national infrastructure of Hispanic churches and para-church organizations dedicated to health care within the Hispanic community;

2. Operates established programs aimed at empowering communities and churches at the grassroots level and provides holistic ministries that serve the spiritual, social, economic and cultural needs of Hispanic communities;

3. Encompasses a network of comprehensive health services including: Mental health services, drug rehabilitation programs, youth projects, child abuse prevention, health education, women's centers, HIV/AIDS programs and community services centers;

4. Uses indigenous leadership within the Hispanic faith community;

5. Aims to secure improved access to health care through organizational, advocacy and networking activities.

This cooperative agreement will be awarded in FY 1998 for a 12-month budget period within a project period of 5 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, contact Dr. Olivia Carter-Pokras, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 443–9923.

Dated: October 29, 1997.

Clay E. Simpson, Jr., MSPH, Ph.D,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 97–31322 Filed 11–28–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of Public Health and Science.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on January 29, 1998 from 8:00 AM to 4:30 PM and on January 30, 1998 from 8:00 AM to 3:30 PM. The meetings will take place in Room 800, Hubert H. Humphrey Building, 200 Independence Ave., S.W., Washington, DC 20201. The meeting will be entirely open to the public.

The Committee will consider the theoretical possibility that Creutzfeldt-Jakob disease (CJD) can be transmitted by blood transfusion. On January 29, 1998 the Committee will review information previously presented to it on April 25, 1997 and receive reports of scientific and clinical advances since then. The Committee will then receive a presentation of current and pending regulatory activities relevant to the theoretical possibility of CJD transmission, and hear invited comments from consumers and industry. At the conclusion of these presentations, the public will be invited to comment. On January 30, 1998 the Committee will consider what if any recommendations it would make to the Department on this matter.

Prospective speakers should notify the Executive Secretary of their desire to address the Committee and should plan for no more than 5 minutes of comment.

CONTACT: Stephen D. Nightingale, MD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, DC 20201. Phone (202) 690–5560 FAX (202) 690–7560 e-mail SNIGHTIN@OSOPHS.HHS.GOV.

Dated: November 21, 1997.

Stephen D. Nightingale,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 97–31321 Filed 11–28–97; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, has been renewed for a 2-year period beginning October 31, 1997 through October 31, 1999.

For further information, contact Henry Falk, M.D., Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, m/s F42, Building 101, Room 1122, Atlanta, Georgia 30341–3724.

Dated: November 24, 1997.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–31351 Filed 11–28–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Epidemiology Program Office, Office of the Director, Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

Name: Guide to Community Preventive Services (GCPS) Task Force Meeting.

Times and Dates: 8 a.m.–5:30 p.m., December 15, 1997; 8 a.m.–4 p.m., December 16, 1997.

Place: Westin Peachtree Plaza, 210 Peachtree Street, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters To Be Considered: Agenda items include (1) presentations and review of evidence tables and draft recommendations of interventions for the Vaccine Preventable Diseases and Motor Vehicle Occupant Injuries Chapters; (2) a discussion on the development of an explicit process to incorporate cost effectiveness into the development of the Guide; (3) a discussion on the role of the expert opinion in the development of the Guide; (4) organization of draft stand-alone topics and/or chapters; (5) a review of the plans to field test, and ''roll out'' sections of the Guide; and (6) a report from the Table of Contents Work Group regarding proposed introductory material ''Front Matter'' in the Guide.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Marguerite Pappaioanou, Chief, Community Preventive Service Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333, telephone 404/639–4301. Persons wishing to reserve a space for this meeting should call 404/639–4301 by close of business on December 10, 1997.

Dated: November 24, 1997.

John C. Burckhardt,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–31350 Filed 11–28–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0353]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Additives and Food Additive Petitions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 3, 1997 (62 FR 46500), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). 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. OMB has now approved the information collection and has assigned OMB control number 0910–0016. The approval expires on November 30, 2000.

Dated: November 20, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31365 Filed 11-28-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–52]

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: Revision of a currently approved collection; *Title of Information Collection:* Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services and Supporting Regulations Contained in 42 CFR 405.2100–.2171; *Document No.:* HCFA–R–52 (OMB#0938–0386); *Use:* These conditions of coverage are needed to ensure proper distribution and effective utilization of ESRD treatment sources. In addition, the conditions maintain and improve the efficient delivery of care by physicians and dialysis facilities.; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Federal Government; *Number of Respondents:* 2,976; *Total Annual Responses:* 2,976; *Total Annual Hours:* 100,937.

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: November 19, 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. 97–31316 Filed 11–28–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–170 and R–108]

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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Lung Transplants; *Form No.:* HCFA–R–170 (OMB# 0938–0670); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of lung transplants performed on Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours:* 1,910.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Criteria for Medicare Coverage of Liver Transplants; *Form No.:* HCFA–R–108 (OMB# 0938–0580); *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of liver transplants performed on Medicare beneficiaries; *Frequency:* Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 12; *Total Annual Responses:* 12; *Total Annual Hours:* 1,880.

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: November 20, 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. 97–31317 Filed 11–28–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: December 5, 1997 (Telephone Conference).

Time: 11:30 a.m. to adjournment.

Place of Meeting: Willco Building, 6000 Executive Boulevard, Suite 409, Rockville MD 20892–7003.

Contact Person: Elsie Taylor, 6000 Executive Boulevard, Suite 409, Rockville MD 20892–7003, 301–443–9787.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The proposal and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health.)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31416 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Therapeutic Strategies for Papillomavirus (Telephone Conference Call).

Date: December 17, 1997.

Time: 2:00 p.m. to Adjournment.

Place: Teleconference, 6003 Executive Blvd., Solar Building, Room 1A1, Bethesda, MD 20892, (301) 402–0747.

Contact Person: Rosemary McCabe Hamill, Technical Evaluation Admin., 6003 Executive Boulevard, Solar Bldg., Room 3C03, Bethesda, MD 20892, (301) 496–0384.

Purpose/Agenda: To evaluate contract proposal.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure

of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31417 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute on 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: December 15, 1997.

Time: 2:00 pm to adjournment.

Place: 6120 Executive Blvd., Rockville MD 20892, (telephone conference call).

Contact Person: Richard S. Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda MD 20892–7180, 301–496–8683.

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 553b(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.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: November 24, 1997.

LaVerne Y. Stringfield.

Committee Management Officer, NIH.

[FR Doc. 97–31418 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

Agenda Purpose: To review and evaluate grant applications.

Committee Name: National Institute of Mental Health Special Emphasis Panel.

Date: December 9, 1997.

Time: 5 p.m.

Place: Parkland, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

Committee Name: National Institute of Mental Health Special Emphasis Panel

Date: December 11, 1997.

Time: 10 a.m.

Place: Parkland, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.

Contact Person: W. Gregory Zimmerman, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–4868.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 522b(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 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 meetings due to the urgent need to meet limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93,282)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31419 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

Name of SEP: Genotypic and Phenotypic Heterogeneity In Dyslexia.

Date: December 15–16, 1997.

Time: December 15—6:00 p.m.–9:00 p.m.; December 16—8:00 a.m.–adjournment.

Place: Bowman Gray School of Medicine, Medical Center Boulevard, Winston-Salem, North Carolina 27157.

Contact Person: Scott F. Andres, Ph.D., Scientific Review Administrator, DSR, 6100 Executive Boulevard, Room 5E03, Bethesda, Maryland 20892, Telephone: 301–496–1485.

Purpose/Agenda: To evaluate and review a grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31420 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following National Library of Medicine Special Emphasis Panel (SEP) meeting.

Name of SEP: National Library of Medicine Special Emphasis Panel.

Date: December 9, 1997.

Place: Conference Call, 8600 Rockville Pike, Building 38A, Room 5N–519, Bethesda, MD 20894.

Contact: Sharee Pepper, Ph.D., Scientific Review Administrator, EP, 8600 Rockville Pike, Bldg. 38A, Rm. 5N–519, Bethesda, Maryland 20894, 301/496–4253.

Purpose/Agenda: To evaluate six research and two resource grant applications.

This notice is begin published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations by the grant review and funding cycle.

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. 93–879—Medical Library Assistance, National Institutes of Health)

Dated: November 24, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–31421 Filed 11–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4307–N–01]

Draft Environmental Impact Statement; City of Porterville, CA; Section 108 Loan Guarantee Funded Infrastructure

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development gives notice that the City of Porterville, California, intends to prepare a Draft Environmental Impact Statement for a public infrastructure project to be located within the Urban Development Boundary of Porterville.

This Notice is in accordance with regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIS effort as a ''Cooperation Agency.''

A Draft Environmental Impact Statement will be completed for the proposed action described herein. Comments relating to the Draft EIS are requested and will be accepted by the contact person listed below. When the Draft EIS is completed, a notice will be sent to individuals and groups known to have an interest on the Draft EIS and particularly on the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIS should contact the person listed below.

DATES: Comments Due: December 16, 1997.

ADDRESSES: All interested agencies, groups and persons are invited to submit written comments on the within-named project and the Draft Environmental Impact Statement to the following contact person: Ronald J. Mauck, City of Porterville, Department of Community Development and Services, 291 North Main Street, Porterville, CA 93257. Such comments should be received by the office within 15 days of the publication of this notice in the **Federal Register** and all comments so received will be considered prior to the preparation and distribution of the Draft Environmental Impact Statement.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and date which the EIS should consider and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdictions by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a ''cooperating agency''.

FOR FURTHER INFORMATION CONTACT: Ronald J. Mauck, City of Porterville, Department of Community Development and Services, 291 North Main Street, Porterville, CA 93257.

SUPPLEMENTARY INFORMATION: The proposed project involves installation of a variety of public infrastructure including, but not necessarily limited to, public streets (including curbs, gutters, sidewalks, and street lights), water and sewer trunk lines, highway on and off ramps, and storm drain lines. The primary objective of installing the infrastructure is to facilitate the development of new industrial and commercial employment centers to accomplish provision of new jobs, particularly low- and moderate-income jobs, within the community.

The City of Porterville anticipates acquiring Community Development Block Grant funds from the U.S. Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93–383) to repay a Section 108 Loan Guarantee from the U.S. Department of Housing and Urban Development in funding the proposed project.

The combined Environmental Impact Report/Environmental Impact Statement (EIR/EIS) will analyze potential environmental effects of five project alternatives. The alternatives described here are not intended to represent a final list of alternatives that may be considered, but are illustrative of varying options for investment of the Section 108 Loan Guarantee funds, enabling an evaluation of the full range of potential environmental impacts in the EIR/EIS. Development plans for the final selected project alternative will represent infrastructure facilities to be constructed and address related growth inducing effects which fall within the range of impacts identified within the EIR/EIS alternatives.

Alternatives

Alternative I would provide for extension of water and sewer trunk lines within Indiana Street and Teapot Dome Avenue connecting the existing City water and sewer infrastructure system with industrial designated lands along Teapot Dome Avenue and within the easterly sector of the Porterville Municipal Airport. Alternative I would also include development of a new highway interchange at the intersection of State Highway 65 and Teapot Dome Avenue. Approximately 200 acres of vacant and agricultural land currently designated by the City General Plan for future industrial development would ultimately be converted to urbanized use under Alternative I.

Alternative 2 would provide for extension of water trunk lines within South Newcomb Street from River Avenue south across the Tule River to a point just south of the intersection of South Newcomb Street and State Highway 190. Alternative 2 would also provide for the construction of South Newcomb Street to arterial width from Heritage Avenue south across the Tule River, inclusive of construction of a bridge across the river, to a point just south of the intersection of South Newcomb Street and State Highway 190. Street improvements would include curb, gutter, sidewalk, and streetlights. Approximately 200 acres of vacant land currently designated by the City General Plan for low-density residential uses would be ultimately converted to Industrial/Commercial Uses under Alternative 2.

Alternative 3 would provide for extension of sewer and trunk lines from Indiana Street north of Gibbons Avenue to the intersection of Indiana Street and Scranton Avenue then west along Scranton Avenue across State Highway 65 to the intersection of Scranton Avenue and South Newcomb Street. Construction of State Highway on and off ramps at the intersection of State Highway 65 and Scranton Avenue would also be provided by Alternative 3. Approximately 300 acres of vacant land designated for highway commercial uses and 200 acres of primarily vacant land designated for industrial uses would ultimately be converted to urbanized uses under Alternative 3.

Alternative 4 (the proposed Project Alternative) would provide for infrastructure improvements within two (2) distinctly separate locations. Alternative 4—Area No. 1 would provide for extension of water and sewer trunk lines in the vicinity of the Porterville Municipal Airport, improvement of Tea Pot Dome Avenue, and Newcomb and West Streets proximate to the Municipal Airport, improvements to the abandon runway located at the Municipal Airport, and installation of master planned storm drain improvements in the vicinity of the municipal airport. Alternative 4—Area No. 2 would provide for extension of water trunk lines in the vicinity of South Jaye Street, State Highway 65, and Gibbons Avenue. South Jaye Street would be extended as an arterial width Street from its southerly terminus to Gibbons Avenue. Alternative 4 would also accomplish installation of storm drain facilities in South Jay Street and Gibbons Avenue. Under Alternative 4, approximately 200 acres of primarily vacant land designated for industrial uses would ultimately be converted to urbanized use.

Alternative 5 is the No Project alternative, consideration of which is required by the California Environmental Quality Act (CEQA) and by the National Environmental Policy Act (NEPA). Under this alternative, the proposed infrastructure project would not occur precluding industrial/commercial development of any of the areas discussed in Alternatives 1–4.

Environmental effects of the proposed project: Land use and planning; population and housing; water impacts; air quality impacts; transportation and circulation impacts; biological resources impacts; energy and mineral resource impacts; hazards; noise impacts; demands on public services and utilities; aesthetic impacts; recreation impacts; and cumulative effects.

Need for the EIS

It has been determined that the project may constitute an action significantly effecting the quality of the human environment and an Environmental Impact Statement will be prepared by the City of Porterville in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190) on such project.

Responses to this notice will be used to:

1. Determine significant environment issues;
2. Identify data which the EIS should address; and
3. Identify agencies and other parties which will participate in the EIS process and the basis for their involvement.

This notice is in accordance with the regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

The Draft Environmental Impact Statement will be published and distributed about January 15, 1998, and a copy will be on file at the City of Porterville Department of Community Development and Services at 291 North Main Street, Porterville, CA 93257 and available for public inspection, or copies may be attained at the same address, upon request.

Scoping

This notice is part of the process used for scoping the EIS. Responses will help determine significant environmental issues, identify data which the EIS should address, and help identify cooperating agencies.

The Draft Environmental Impact Statement will be published upon completion and will be on file, and available for public inspection at the address listed below. Copies may also be obtained upon request, at the same address.

This Notice shall be effective for one year. If one year after the publication of the Notice in the **Federal Register** a Draft EIS has not been filed on the project, then the Notice for that project shall be cancelled. If a draft EIS is expected more than one year after the publication of this Notice, a new and updated Notice must be published.

Dated: November 20, 1997.

Richard H. Broun,

Director, Office of Community Viability.

[FR Doc. 97–31339 Filed 11–28–97; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the Fall 1997 meeting of the Great Lakes Panel on Aquatic Nuisance Species, a committee of the Aquatic Nuisance Species Task Force, and its three subcommittees (Policy and Legislation, Information/Education, Research Coordination). Work plan elements, identification of priorities, and plans for fiscal year 1998 activities will be discussed during subcommittee meetings. The Panel meeting will highlight discussion of State aquatic nuisance species legislation related to the Panel's model State legislation project. Also featured at the meeting will be subcommittee reports, updates on aquatic nuisance species legislation and appropriations, the Great Lakes ballast water demonstration project, the Chicago Waterways nonindigenous species dispersal barrier project, model guidelines for ANS prevention and control, and reports from Panel members. The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements for consideration.

DATES: The three subcommittees of the Great Lakes Panel will meet from 1:00 p.m. to 5:00 p.m. on Wednesday, December 17, 1997, and the full Panel will meet from 8:30 a.m. to 4:00 p.m. on Thursday, December 18, 1997.

ADDRESSES: The meeting will be held at the Holiday Inn—North Campus, 3600 Plymouth Road, Ann Arbor, Michigan. The telephone number of the Holiday Inn is 313–769–9800.

FOR FURTHER INFORMATION CONTACT:

Michael J. Donahue or Matthew Doss, Great Lakes Commission, at 313–665–9135, or Robert A. Peoples, Executive Secretary, Aquatic Nuisance Species Task Force, at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces the Fall 1997 meeting of the Great Lakes Panel on Aquatic Nuisance Species and its subcommittees. The Panel is a committee of the Aquatic Nuisance Species Task Force established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741). Minutes of the meeting will be maintained by the Great Lakes Commission, 400 Fourth Street, Ann Arbor, Michigan 48103–4816, and the Executive Secretary, Aquatic Nuisance Species Task Force, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, Virginia 22203–1622, and will be available for inspection during regular business hours within 30 days following the meeting.

Dated: November 16, 1997.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 97–31324 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

San Francisco Bay/Inland Delta Biological Case Study Public Workshop

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the San Francisco Bay/Inland Delta Biological Case Study Public Workshop. The U.S. Fish and Wildlife Service is funding three biological case studies in fulfillment of the Biological Study requirements of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. The studies provide the basis for reporting to Congress on whether aquatic nuisance species threaten the ecological characteristics and economic uses of waters of the United States other than the Great Lakes. The Service strategy for fulfilling this requirement includes a public workshop after each Biological Case Study is completed to ensure broad and comprehensive review and input, especially with regard to impacts of aquatic nuisance species. Specifically, this workshop will include an update on San Francisco Bay and Inland Delta aquatic nuisance species invasions and associated impacts, provide a forum for stakeholders and interested parties to evaluate, comment on, and add to the San Francisco Bay/Inland Delta Biological Case Study, and provide an opportunity for participant to provide additional information and make associated recommendations. The workshop is open to the public. Interested persons may make oral statements at the meeting or submit written statements for consideration.

DATES: The Workshop will be held from 9:00 a.m. to 4:00 p.m. on December 10, 1997.

ADDRESSES: The Workshop will be held at the U.S. Army Corps of Engineers' Bay Model Visitor Center, 2100 Bridgeway, Sausalito, California.

FOR FURTHER INFORMATION CONTACT: Craig A. Czarnecki, U.S. Fish and Wildlife Service, by telephone at 703–358–2464 or E-mail at craig__czarnecki@fws.gov or Robert Peoples, U.S. Fish and Wildlife Service, by telephone at 703–358–2025 or E-mail at robert__peoples@fws.gov.

SUPPLEMENTARY INFORMATION: This notice announces the San Francisco Bay/Inland Delta Biological Case Study Public Workshop, being conducted in fulfillment of section 1102(a)(2) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(a)(2)). Proceedings of the workshop will be prepared and maintained by the U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, Virginia 22203–1622.

Dated: November 17, 1997.

Rowan W. Gould,

Acting Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 97–31323 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–931–1430–01; Nev-064968]

Public Land Order No. 7299; Revocation of Public Land Order No. 3645; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes, in its entirety, a public land order that withdrew 3,114.88 acres of public land for the protection of deer winter range. The withdrawn land was subsequently included in legislation that transferred public land in Nevada to the National Forest System. The withdrawal is no longer needed for its intended purpose. This action will open the land to such forms of disposition as may by law be made of National Forest System land and to mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6532.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 3645, which withdrew land for Jacks Valley Deer Winter Range, is hereby revoked in its entirety:

Mount Diablo Meridian

T. 14 N., R. 19 E.,
Sec. 1, W½ lot 1 of the NE¼, lot 1 of the NW¼, E½ lot 2 of the NW¼ (except lot 3), SW¼, and W½SE¼;
Sec. 2, SE¼NE¼, E½SW¼, and SE¼;
Sec. 11, NE¼, N½NW¼, SW¼NW¼, and SE¼;
Sec. 12, W½NE¼, W½, and SE¼;
Sec. 13;
Sec. 14, N½NE¼, SE¼NE¼, and SE¼;
Sec. 23, NE¼;
Sec. 24, N½ and NW¼SW¼.

The area described contains 3,114.88 acres in Douglas County.

2. At 9 a.m. on December 1, 1997, the land described above shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. S. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: November 24, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–31355 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–4212–11; COC39391]

Realty Action: Airport Conveyance of Public Land In Rio Blanco County, Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands in Rio Blanco County, Colorado, have been examined and found suitable for classification for conveyance to the Rio Blanco Board of County Commissioners under the authority of Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215).

Sixth Principal Meridian, Colorado

T. 1 N., R. 101 W.,
Section 6, lot 35.
Encompassing 2.94 acres.

The land in the proposed patent to the Rio Blanco Board of County Commissioners is not (1) within any National Park, National Monument, National Recreation Area, or similar area under the administration of the National Park Service; (2) within any

unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; or (3) within any National Forest or Indian Reservation.

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. The Secretary of the Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation and maintenance of the airport.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance of the land will be subject to valid existing rights, including right-of-way COC23972B. This right-of-way is twenty-five feet in width and consists of a buried pipeline.

4. At the discretion of the Secretary of Transportation, the land shall revert to the United States in the vent that the land is not developed for airport purposes or used in a manner consistent with the terms of the patent. If only a portion of the land conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that specific part shall, at the discretion of the Secretary, revert to the United States.

DATES: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, White River Resource Area, 73544 Highway 64, Meeker, Colorado.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation except mineral leasing laws, and rights-of-way. An airport lease was issued June 8, 1984, and remains in effect until title conveyance.

For a period of 45 days from the date of publication in the **Federal Register**, interested persons may submit comments regarding the proposed lease or conveyance or classification of the lands to the District Manager, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an airport. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an airport. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Naomi Hatch, Realty Specialist, or Vern Rholl, Realty Specialist, White River Resource Area, 73544 Highway 64, Meeker, Colorado 81641, (970) 878–3601.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 97–31348 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Public Notice

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing ferry services for the public at Fire Island National Seashore for a period of ten (10) years from date of contract execution.

EFFECTIVE DATE: January 30, 1998.

ADDRESS: Interested parties should contact National Park Service, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772 to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has waived its right of preference in renewal, and the contract will be awarded to the party that has submitted the best responsive offer. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Senior Concessions Program Manager, Boston Support Office, not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: November 14, 1997.

Chrysandra L. Walter

Acting Regional Director, Northeast Region

[FR Doc. 97–31368 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Reclamation Information Collection Activities: Request for Comments

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation), as part of its continuing effort to reduce paperwork and respondent burdens, invites other Federal agencies, state, local or tribal governments which manage recreation sites at Reclamation projects; concessionaires, subconcessionaires and not-for-profit organizations who operate concessions on Reclamation lands; and, the public, to comment on proposed and/or continuing information collections as required under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Currently, comments are being solicited about Reclamation's intent to obtain information proposed to assess the relevance of recreation and concession activities at Reclamation projects.

DATES: Written comments must be submitted to the office listed in the addresses section on or before January 30, 1998.

ADDRESSES: Direct comments pertaining to the intent to collect recreation and concession information to: Bureau of Reclamation, Land, Recreation and Cultural Resources Office, D–5300, Attention: Mr. Kent Higgins, P.O. Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: For additional information or a copy of the proposed Recreation Data Use Report, contact Mr. Higgins at the address provided or telephoning: (303) 236–3289, extension 246.

SUPPLEMENTARY INFORMATION: Reclamation is prepared to collect Reclamation-wide recreation and concession information in support of existing public laws including the Federal Water Project Recreation Act (Pub. L. 89–72) and the Land and Water Conservation Fund Act (Pub. L. 88–578) and to fulfill reports to the President and the Congress. This collection of

information will allow Reclamation to meet the requirements of the Government Performance and Results Act (GPRA), financial reporting requirements, and in pursuit of Reclamation's mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American people. Collection of Reclamation-wide recreation and concessionaire information supports specific information required by the Land and Water Conservation Fund Act and the bureau's ability to accomplish 3 mission objectives, and 4 of 16 strategies identified in the multi year GPRA-based strategic plan.

The proposed three part Recreation Use Data Report is a reinstatement, with a significant reduction of annually required or updated information collection as compared to Reclamation's former annual Recreation and Wildlife Summary—OMB Clearance 1006–0002, which expired December 31, 1992. Collected information will be used by Reclamation and its region and area offices to fulfill annual assessments, requirements, and budget projects. Collected information will permit relevant program assessments of Reclamation managed or its recreation managing partners and/or concessionaires for the purpose of protecting the public interest and the resources managed by Reclamation. In addition, the collection information will fulfill congressional and financial reporting requirements.

Collection of Information

Title: Recreation Use Data Report

Part I. Recreation Facilities Report
Part II. Recreation Use Report
Part III. Concession Data Report

Type of Review: Recreation Use Data Report—Reinstated, with change.

Abstract: Collect Reclamation-wide recreation and concession information in support of existing public laws, financial reporting requirements, and Reclamation's mission. The information will further Reclamation's ability to evaluate program and management effectiveness of existing recreation and concessionaire resources and facilities and validate effective public use of managed recreation resources, located on Reclamation project lands in the 17 Western States. In addition and through use of the collection information, Reclamation will develop a set of recreation and concession management practices for comparison purposes against other known best business practices. Information collection primarily affects other Federal agencies, State, local or tribal governments or agencies who manage Reclamation's recreation resources and facilities and for-profit concessionaires, sub-concessionaires and nonprofit organizations located on Reclamation lands with associated recreation services. A portion of the information collected may include individual or group users of these managed recreation resources or concessionaires.

Frequency: Annual reporting.

Average Time per Response: 2 hours.

Part I. Recreation Facilities Report (40-minutes, by Reclamation and/or Managing Partners).

Part II. Recreation Use Report (40-minutes, by Reclamation and/or Managing Partners).

Part III. Concessions Data Report (40-minutes, by Reclamation and/or Managing Partners with concessionaire's information).

Estimated Number of Respondents: 535 (225 concessionaires, 310 Federal and nonfederal managing partners).

Estimated Burden Hours: 1070 hours.

Written comments are solicited to (1) evaluate whether the proposed information collection is essentially for the assessment of Reclamation's performance, including whether the information will have practical utility; (2) evaluate the accuracy of Reclamation's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and, (4) minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology.

Dated: November 21, 1997.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 97–31352 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Final Environmental Impact Statement and Planning Report, American River Water Resources Investigation, California

AGENCY: Bureau of Reclamation, U.S. Department of the Interior.

ACTION: Notice of availability of final environmental impact statement (FEIS) [FES 97 36].

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the Bureau of Reclamation (Reclamation) as lead agency has prepared a FEIS and Planning Report for the American River Water Resources Investigation (ARWRI), California.

The purpose of the FEIS is to address the environmental impacts of meeting the future water needs for the local area through the year 2030. The FEIS describes the environmental effects of three alternatives, including no action. The proposed alternatives provide a means of action through which the water needs of the five-county area (El Dorado, Placer, Sacramento, San Joaquin, and Sutter) are met. The proposed alternatives exercise the provisions of several Federal laws as applicable to Reclamation. The FEIS also incorporates the Draft Environmental Impact Statement (DEIS) and includes all comments received on the DEIS and responses to those comments.

DATES: No decision will be made on the proposed action until 30 days after release of the FEIS. After the 30-day waiting period, Reclamation will complete a Record of Decision which states the action that will be implemented and which discusses all factors leading to the decision.

ADDRESSES: Copies of the FEIS may be requested from Reclamation at the following address: Central California Area Office, Attention: CC–400, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630–1799; telephone: (916) 988–1707. Copies of the FEIS are also available for inspection at the above address and at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver CO 80225; telephone: (303) 236–6963.
- Bureau of Reclamation, 2800 Cottage Way, Room E–1704, Sacramento, CA 95825–1898; telephone: (916) 978–5100.
- Bureau of Reclamation, Central California Area Office, Attention: CC–102, 7794 Folsom Dam Road, Folsom CA 95630; telephone: (916) 988–1707.
- Sacramento Metropolitan Water Authority, 5620 Birdcage Street, Suite 180, Citrus Heights CA 95610–7632; telephone: (916) 967–7692.
- Placer County Water Agency, 144 Ferguson Road, Auburn CA 95603; telephone: (916) 823–4850.

• El Dorado County Water Agency, 330 Fair Lane, Building A, Placerville CA 95667; telephone: (916) 621–5392.

• Georgetown Divide Public Utility District, 6425 Main, Georgetown CA 95634; telephone: (916) 333–4356.

• El Dorado Irrigation District, 2890 Mosquito Road, Placerville CA 95667; telephone: (916) 622–4513.

• El Dorado County Planning Office, 2850 Fairlane Court, Placerville CA 95667; telephone: (916) 621–5355.

• California Department of Water Resources, Central District, 3251 S Street, Sacramento CA 94816–7017; telephone: (916) 445–5631.

• Sacramento City-County Office of Metropolitan Water Planning, County Office, 5770 Freeport Boulevard, Suite 200, Sacramento CA 95822; telephone: (916) 433–6276.

• San Joaquin County Department of Public Works, Flood Control Center, 1810 E. Hazelton Avenue, Stockton CA 95205; telephone: (209) 468–3000.

Libraries: Copies will also be available for inspections at the following public libraries:

• El Dorado County Library, Main Branch, 345 Fair Lane, Placerville CA 95667.

• Auburn-Placer County Library, 350 Nevada Street, Auburn CA 95603.

• Roseville Public Library, Main Library, 225 Taylor Street, Roseville CA 95678.

• Folsom Library, 300 Persifer Street, Folsom CA 95630.

• Sacramento Public Library, Central Branch, 828 I Street, Sacramento CA 95814.

• Sacramento County Library, 380 Civic Drive, Galt CA 95632.

• Stockton Public Library, 605 N. El Dorado Street, Stockton CA 95202.

• Lodi Public Library, 201 W. Locust Street, Lodi CA 95240.

• Manteca Public Library, 320 W. Center Street, Manteca CA 95336.

• Marysville-Yuba County Library, 303 Second, Marysville CA 95901.

FOR FURTHER INFORMATION CONTACT: Mr. Al Candlish, MP–120, U.S. Bureau of Reclamation, Mid-Pacific Region, 2800 Cottage Way, Sacramento CA 95825–1898, telephone: (916) 978–5197.

SUPPLEMENTARY INFORMATION: Reclamation and the Sacramento Metropolitan Water Authority prepared a joint draft environmental impact report/environmental impact statement (DEIR/DEIS) for the ARWRI in February 1996. The SMWA has decided not to release a Final Environmental Impact Report at this time pursuant to the California Environmental Quality Act.

Dated: November 18, 1997.

Roger K. Patterson,

Regional Director.

[FR Doc. 97–31454 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of a meeting of the Trinity River Basin Fish and Wildlife Task Force.

DATES: The meeting will be held on Thursday, January 15, 1998, 1:00 to 4:00 p.m.

ADDRESSES: The meeting will be at the Doubletree Hotel, 1830 Hilltop Drive, Redding, CA 96001. Telephone: 530/221–8700.

FOR FURTHER INFORMATION CONTACT: Mr. Russell P. Smith, Chief, Environmental and Natural Resource Division, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake, California, 96019. Telephone: 916/275–1554.

SUPPLEMENTARY INFORMATION: Task Force members will be briefed on the Trinity River Mainstem Fishery Restoration Environmental Impact Statement and the U.S. Fish and Wildlife Service Trinity River Flow Study Report. The Task Force members will review and comment on draft language to reauthorize the program. The Task Force will also approve a priority list of additional projects for Fiscal Year 1998.

The meeting of the Task Force is open to the public. Any member of the public may file a written statement with the Task Force in person or by mail before, during, or after the meeting. To the extent that time permits, the Task Force Chairman may allow public presentation of oral statements at the meeting.

Dated: November 18, 1997.

Roger K. Patterson,

Regional Director.

[FR Doc. 97–31453 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–94–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Voluntary Foreign Aid Advisory Committee; Notice of a Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: December 18, 1997 (8:30 a.m. to 1:00 p.m.).

Location: State Department, Loy Henderson Auditorium, 23rd Street Entrance.

This will be the first public meeting of the newly appointed Advisory Committee on Voluntary Foreign Aid (ACVFA). Different panels of experts will help the committee determine their workplan and to select focus issues for this new term.

The meeting is free and open to the public. HOWEVER, NOTIFICATION BY DECEMBER 15, 1997, THROUGH THE ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED. Persons wishing to attend the meeting must FAX their name, organization, birthdate and social security number for security purposes to Lisa J. Douglas (703) 741–0567 or Susan Saragi (202) 216–3039.

Dated: November 18, 1997.

Elise Storck,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 97–31346 Filed 11–28–97; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

SES Performance Review Board

AGENCY: Agency for International Development.

ACTION: Notice of Membership Roster for the Agency's Senior Executive Service (SES) Performance Review Board (PRB).

SUMMARY: This notice is to add the approved candidate listed below to the standing roster for service on the Agency's SES Performance Review Board. The member is as follows: John Wilkinson.

FOR FURTHER INFORMATION CONTACT: Melissa McCoy (202) 712–5872 or Teresa Spikes (202) 712–5638.

Dated: November 21, 1997.

Sherrie Hailsbeks,

Executive Secretary, Performance Review Board.

[FR Doc. 97–31345 Filed 11–28–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Extension of Existing Collection; Election Form to Participate in an Employment Eligibility Confirmation Pilot Program.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the Federal Register on September 2, 1997 at 62 FR 46376, allowing for an emergency review with 60-day public comment period. No comments were received by the INS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 31, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, 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.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Election Form to Participate in an Employment Eligibility Confirmation Pilot Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–876. Files and Forms Management—SAVE Program, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit, and Federal Government. The information gathered from employers using this form will assist the INS in allocating resources and priorities in conducting the three pilot programs mandated by Title IV, Subtitle A of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, 110 Stat. 3009.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 200,000 responses at 1.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 300,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 415 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–31343 Filed 11–28–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Extension of Existing Collection: Pilot Program Limiting Issuance of Driver's License and Identification Cards to Illegal Aliens.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 2, 1997 at 62 FR 46377, allowing for an emergency review with 60-day public comment period. No comments were received by the INS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 31, 1997. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Pilot Program Limiting Issuance of Driver's License and Identification Cards to Illegal Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No agency form number. SAVE Program, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: States, Local or Tribal Governments. The information collection is contained in a public notice prescribing guidelines as required by Section 502 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, under which states may conduct pilot programs limiting issuance of driver's licenses and identification cards to illegal aliens, and inviting states to contact the INS to express interest in participating in such a pilot program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 54 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 108 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 24, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–31344 Filed 11–28–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–90]

Communication Certification Laboratory, Application for Renewal of Recognition; (Authority: 29 CFR 1910.7)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of application for renewal of recognition as a Nationally Recognized Testing Laboratory (NRTL), and preliminary finding.

SUMMARY: This notice announces the application of Communication Certification Laboratory for renewal of its recognition as a NRTL under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is January 30, 1998.

ADDRESSES: Send comments concerning this notice to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Communication Certification Laboratory (CCL) has made application, pursuant to 29 CFR 1910.7, for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL). CCL previously received its recognition as a NRTL on June 21, 1991 (see 56 FR 28579), for a period of five years ending June 21, 1996. Appendix A to 29 CFR 1910.7 stipulates that the initial period of recognition of a NRTL is five years and that a NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. CCL applied for a renewal of its recognition on June 21, 1995 (see Exhibit 7), within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process.

The address of the laboratory covered by this application is: Communication Certification Laboratory, 1940 West Alexander Street, Salt Lake City, Utah 84119.

CCL desires renewal of its recognition for the following test standards, for which CCL was previously recognized:

ANSI/UL 478 Information-Processing and Business Equipment
ANSI/UL 1012 Power Supplies
ANSI/UL 1459 Telephone Equipment
ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment

The NRTL staff reviewed CCL's request, and performed an on-site review (''assessment'') of the laboratory, and determined that CCL can be granted a renewal of its recognition as a NRTL.

Preliminary Finding

Based upon the recommendations of the staff, including the recommendation and on-site review (''assessment'') report from the Lead Assessor dated August 28, 1997 (see Exhibit 8), the Assistant Secretary has made a preliminary finding that the CCL laboratory mentioned above, for which the renewal of recognition was requested, can meet the requirements as prescribed by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant having met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than January 30, 1998 and must be addressed to the Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N 3653, Washington, DC 20210. Copies of the CCL application letter, the laboratory survey reports, and all submitted comments, as received (Docket No. NRTL–1–90), are available for inspection and duplication at the

Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (CCL) satisfies the requirements for renewal of its recognition as a NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A to Section 1910.7.

Signed at Washington, D.C. this 18th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–31411 Filed 12–1–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–89]

Intertek Testing Services NA, Inc., Expansion of Recognition; (Authority: 29 CFR 1910.7)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL).

SUMMARY: This notice announces the Agency's final decision on the application of Intertek Testing Services NA, Inc. for expansion of its recognition as a NRTL under 29 CFR 1910.7. In addition, this notice reflects the name change to Intertek Testing Services NA, Inc., resulting from a change of ownership of Inchcape Testing Services NA, Inc., the predecessor to Intertek.

EFFECTIVE DATE: This recognition will become effective on December 1, 1997 and will be valid until December 2, 2002, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice that the recognition of Intertek Testing Services NA, Inc. (ITS) as a Nationally Recognized Testing Laboratory has been expanded to include the additional laboratory sites, and the site specific standards listed below. ITS applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL) for additional laboratory sites, pursuant to 29 CFR 1910.7, which was published in the **Federal Register** (62 FR 42829, 8/8/97). The notice included a preliminary finding that ITS could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by October 7, 1997. No comments were received concerning this request for recognition.

The addresses of the concerned laboratories are:

Intertek Testing Services NA Inc., 530 Garcia Avenue, Pittsburg, California 94565

Intertek Testing Services NA Ltd., 211 Schoolhouse Street, Coquitlam, British Columbia, V3K 4X9 Canada

Intertek Testing Services Hong Kong Ltd., 2/F., Garment Centre, 576 Castle Peak Road, Kowloon, Hong Kong

Intertek Testing Services Taiwan Ltd., 14/F Huei Fung Building, 27, Chung Shan North Road, Sec. 3, Taipei, Taiwan

Background

Expansion of Recognition

On August 24, 1994, Intertek Testing Services NA Inc., as ''Inchcape'', made individual applications for expansion of its recognition as a Nationally Recognized Testing Laboratory. The applications were for the recognition of additional sites, and included facilities located in Taipei, Taiwan (see Exhibit 25A), and Kowloon, Hong Kong (see Exhibit 25B). On-site investigations of these facilities had been carried out previously as part of a large-scale overseas investigation of sites requested for recognition by several other NRTLs. On-site Review reports, dated December 15, 1994, of the investigation of the Taipei, Taiwan site [see Exhibit 25E(4)], and of the Kowloon, Hong Kong site, [see Exhibit 25E(3)], both carried out in September 1993, were prepared. On April 3, 1996, ITS applied for an expansion of its recognition for yet other sites including two former Warnock Hersey sites, now owned by ITS, in Pittsburg, California and Coquitlam, British Columbia (see Exhibit 25D). The test standards requested for these two sites were: ASTM E152—Fire Test Method for Door Assemblies, and ASTM E163—Standard Method of Fire Tests of Window Assemblies. In addition, ITS informed OSHA of the official transfer of ownership of the Warnock Hersey, Inc., ''WHI'' registered certification mark to ITS, which will be used by ITS to identify products certified at the two facilities and under the two test standards noted above (see Exhibit 25C).

Change of Name

OSHA was notified by letter, dated December 6, 1996, of a change in ownership of Inchcape Testing Services NA, Inc. (see Exhibit 25F). At the time, no change of corporate name was requested, although OSHA was informed that such a request would be made at a later date. Such a request for name change was made by letter dated April 14, 1997 (see Exhibit 25G). The requested name change was from Inchcape Testing Services NA, Inc. to Intertek Testing Services NA Inc. The abbreviation of the company name as ''ITS'' would continue to be used.

Final Decision and Order

Based upon a preponderance of the evidence, and the OSHA staff findings and recommendations, including the original and the February 26, 1997 On-Site Review Reports of the four facilities being recognized, OSHA finds that ITS has met the requirements of 29 CFR 1910.7 for expansion of its present recognition, and ITS's recognition is hereby expanded to include the additional sites, all subject to the conditions listed below. The recognition is limited to equipment or materials which, under 29 CFR part 1910, require or permit testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. The recognitions of the Coquitlam, B. C. and the Pittsburg, CA sites are further limited to the use of the following 2 test standards for the testing and certification of equipment or materials included within the scope of these standards.

Recognition of Test Standards for the Coquitlam and Pittsburg Sites

ITS has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ASTM E152—Standard Methods of Fire Tests of Door Assemblies

ASTM E163—Standard Method of Fire Tests of Window Assemblies

Conditions

Intertek Testing Services NA Inc. must also abide by the following conditions of the recognition, in

addition to those already required by 29 CFR 1910.7:

OSHA shall be allowed access to ITS's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ITS has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ITS shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ITS agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ITS shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ITS will continue to meet the requirements for recognition in all areas where it has been recognized; and

ITS will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 18th day of November, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–31412 Filed 11–28–97; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–96–1]

Permit-Required Confined Spaces (29 CFR 1910.146); Announcement of OMB Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice; Announcement of the OMB Approval of Information Collection Requirements

SUMMARY: The Occupational Safety and Health Administration is announcing that the collections of information in the Permit-Required Confined Spaces standard, 29 CFR 1910.146, have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

DATES: Effective December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Bielaski, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–8076, ext. 142.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 25, 1996 (61 FR 2267), the Agency announced its intent to request renewal of its current OMB approval for 29 CFR 1910.146, Permit-Required Confined Spaces. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has renewed its approval for the information collection and assigned OMB control number 1218–0203.

The approval expires on June 30, 1999. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Signed at Washington, D.C., this 18th day of November 1997.

John F. Martonik,

Acting Director, Directorate of Safety Standards Programs.

[FR Doc. 97–31413 Filed 11–28–97; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Theater/Musical Theater Section B (Planning & Stabilization Category) to the National Council on the Arts will be held on December 12, 1997. The panel will meet from 4:00 p.m. to 6:00 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

The meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31446 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Theater/Musical Theater Section A (Planning & Stabilization Category) to the National Council on the Arts will be held on December 10–12, 1997. The panel will meet from 9:30 a.m. to 5:30 p.m. on December 10, from 9:30 a.m. to 6:30 p.m. on December 11, and from 9:30 a.m. to 4:00 p.m. on December 12, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 9:30 a.m. to 11:30 a.m. on December 12, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:30 a.m. to 5:30 p.m. on December 10, from 9:30 a.m. to 6:30 p.m. on December 11, and from 11:30 a.m. to 4:00 p.m. on December 12, are for the purpose of Panel review, discussion, evaluation, and

recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31447 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Museum Section (Creation & Presentation Category) to the National Council on the Arts will be held on December 16–19, 1997. The panel will meet from 9:00 a.m. to 6:30 p.m. on December 16–18, and from 9:00 a.m. to 3:00 p.m. on December 19, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on December 19, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on December 16–18 and from 11:00 a.m. to 3:00 p.m. on December 19, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31450 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnership Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Partnership Panel, National Services Section, to the National Council on the Arts will be held on January 14, 1998. The panel will meet from 12:00 p.m. to 1:00 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9) (B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Access Ability, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31448 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnership Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Partnership Panel, Partnership Agreements Section, to the National Council on the Arts will be held on January 24–14, 1998. The panel will meet from 9:00 a.m. to 6:30 p.m. on January 12, from 9:00 a.m. to 5:30 p.m. on January 13, and from 9:00 a.m. to 4:30 p.m. on January 14 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 2:30 p.m. to 4:30 p.m. on January 14, will be open to the public for a policy discussion of guidelines, planning, field needs and trends, and Leadership Initiatives.

The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on January 12, from 9:00 a.m. to 5:30 p.m. on January 13, and from 9:00 a.m. to 2:30 p.m. on January 14, are for the purpose of Panel review, discussion, evaluation, and recommendation on

applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call (202) 682–5691.

Dated: November 24, 1997.

Kathy Plowitz-Worden,

Panel Coordinator Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31449 Filed 11–28–97; 8:45 am]

BILLING CODE 7537–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting

TIME & DATE: 2:00 p.m., Thursday, December 11, 1997.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.

STATUS: Open/Closed.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202/376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes: September 15, 1997 Regular Meeting
III. Election of Vice Chairman
IV. Committee Appointments:
  a. Audit Committee
  b. Budget Committee
  c. Personnel Committee
V. Treasurer's Report
VI. Executive Director's Quarterly Management Report
VII. Personnel Committee Report: November 25, 1997, Closed Meeting
VIII. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 97–31596 Filed 11–26–97; 2:42 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–327]

Sequoyah Nuclear Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–77 issued to the Tennessee Valley Authority (TVA, the licensee) for operation of the Sequoyah Nuclear Plant, Unit 1, located in Soddy Daisy, Tennessee.

The proposed amendment would add a one-time allowance through operating Cycle 9 to Technical Specification (TS) Surveillance Requirement (SR) 4.4.3.2.1.b to perform stroke testing of the power-operated relief valves (PORVs) in Mode 5 rather than Mode 4, as currently required.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of SQN Unit 1 in accordance with the proposed change to the TSs . . . does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The possibility of occurrence or the consequences for an accident or malfunction of equipment is not increased as the PORVs have been tested under representative conditions and are fully functional. As such, the PORVs are expected to open and close on demand. In addition, the block valves are still available to mitigate flow from the PORVs.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

A possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created; or the possibility for an accident or malfunction of a different type does not exist as the PORVs have been tested under representative conditions and are fully functional. No new failure modes have been introduced.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety has not been reduced. The PORVs are fully functional. However, literal compliance with the TS requires the block valves to be closed. The margin of safety will be increased if continued operation is allowed with the block valves open.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to

take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 31, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudication Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley Authority, ET 11H 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 21, 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 Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 24th day of November 1997.

Ronald W. Hernan,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31423 Filed 11–28–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Nuclear Regulatory Commission and Department of Energy; Public Meeting on NRC Regulatory Oversight of DOE Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) will hold a public meeting on Thursday, December 11, 1997, in Oakland, California, to address issues related to the recently established pilot program for NRC's external regulation of certain DOE facilities.

SUPPLEMENTARY INFORMATION: The Department of Energy and the Nuclear Regulatory Commission will hold a joint public meeting to provide information on this pilot project on Thursday, December 11, 1997, at 7:00 P.M. in Room N1–7 in the North Tower of the Oakland Federal Building, 1301 Clay Street, Oakland, California.

In June 1997, DOE and NRC agreed to pursue NRC external regulation of certain DOE facilities on a pilot program basis. A pilot program of NRC simulated regulation has been established to collect information on the desirability of NRC oversight and on whether to seek legislation to authorize such oversight. The DOE and the NRC expect to evaluate six to ten DOE facilities over the next two years under the pilot program. The Ernest O. Lawrence Berkeley National Laboratory (LBNL) has been chosen as one of the pilot sites.

The major areas of discussion at this meeting will be:

- The overall pilot program and background information.
- The LBNL Work Plan.
- Major issues affecting NRC oversight (generic and site-specific).

One of the main purposes of the meeting is to describe the process through which stakeholders may participate in the pilot program. Stakeholders will be invited to ask questions and submit comments relevant to the objectives of the pilot program and the process by which those objectives are proposed to be addressed at the Berkeley Laboratory. Issues raised by stakeholders will be addressed in the final report following the pilot evaluation at Berkeley. If you plan to attend this meeting, or if you cannot attend but would like to bring an issue to our attention, please contact Ms. Carol Powell at 510/637–1814.

Since 1994, the Department of Energy (DOE) has been considering whether there are advantages to be gained from external regulation of existing DOE facilities. Two advisory groups recommended that the Nuclear Regulatory Commission (NRC) be considered as the external regulator of nuclear and radiological safety at DOE sites. External regulation by the NRC may improve the efficiency and effectiveness of DOE's radiological safety programs. DOE facilities would be regulated consistent with other facilities of the same type engaged in similar activities, and the NRC could maintain complete independence because it has no responsibility for operating the facilities.

A number of background documents pertaining to the issue of NRC oversight of DOE facilities are available or will be made available prior to the meeting. These include:

- A Memorandum of Understanding between NRC and DOE, dated November 21, 1997.
- An NRC Commission Paper entitled, ''Status Report of the Nuclear Regulatory Commission Task Force On Oversight of the Department of Energy, In Response to COMSECY–96–053–DSI 2 (SECY–97–206) dated September 12, 1997.
- NRC Staff Requirements Memorandum: COMSECY–96–053, ''Oversight of the Department of Energy (DSI 2),'' dated March 28, 1997.
- NRC Direction Setting Issue Paper ''Oversight of the Department of Energy'' (DSI 2) dated September 16, 1996.
- Report of the DOE Working Group on External Regulation, dated December 1996.
- Report of the DOE Advisory Committee on External Regulation of DOE Nuclear Safety, dated December 1995.

You may obtain copies of these documents by contacting Carol Powell at the Department of Energy, telephone number 510–637–1814, or from the joint DOE/NRC Web Site at http://www.nrc.gov/NRC/NMSS/doepilot.html. As additional documents are completed they will be added to the web site.

Dated at Rockville, Maryland, this 24 day of November, 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–31422 Filed 11–28–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Final Report

AGENCY: Office of Management and Budget—Budget Analysis Branch.

ACTION: Notice of transmittal of Final Sequestration Report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Final Sequestration Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Alicia Kolaian, Budget Analysis Branch—202/395–4575.

Dated: November 26, 1997.

Sarah B. Richardson,

Public Information Officer, Office of Management and Budget.

[FR Doc. 97–31458 Filed 11–26–97; 8:45 am]

BILLING CODE 3110–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, December 8, 1997; 8:30 a.m., Tuesday, December 9, 1997.

PLACE: Costa Mesa, California, at the Westin South Coast Plaza Hotel, 686 Anton Boulevard, in the Santa Ana Room.

STATUS: December 8 (Closed); December 9 (Open).

MATTERS TO BE CONSIDERED:

Monday, December 8—1:00 p.m. (Closed)

1. Audit Committee Report and Review of Year-End Financial Statements.
2. Strategic Outsourcing.
3. A Strategic Alliance Program.

Tuesday, December 9—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 3–4, 1997.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Semiannual Report to Congress on Summary of Investigative Activities [Actions Under 39 U.S.C. 3005 and 3007].
4. Fiscal Year 1997 Audited Financial Statements.
5. Fiscal Year 1997 Annual Report of the Postmaster General.

6. Final FY 1999 Appropriation Request.
7. Capital Investments.
   a. Radio Frequency Identification (RFI) Project.
   b. Boise, Idaho, Processing & Distribution Center.
   c. Sioux Falls, South Dakota, Processing & Distribution Center.
   d. Church Street Station, New York, Renovation Project, Phase 2.
   e. Advanced Facer Canceler Systems.
   f. Barcode Readers for the Flat Sorting Machine 1000.
8. Briefing on the 1998 Stamp Program.
9. Report on the Pacific Area and Los Angeles Performance Cluster.
10. Tentative Agenda for the January 5–6, 1998, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–31597 Filed 11–26–97; 2:43 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22902; 812–10870]

Allied Capital Corporation, et al.; Notice of Application

November 21, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under sections 6(c), 12(d)(1)(J), 17(b), 57(c), and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act, and under section 12(h) of the Securities Exchange Act of 1934 (the ''Exchange Act'').

Summary of Application: The order would permit two business development companies (''BDCs''), a real estate investment trust, and the investment adviser to these entities, to merge into a third BDC. In addition, the order would permit the surviving BDC and its wholly-owned subsidiaries to file reports on a consolidated basis and to engage in certain transactions that would otherwise be permitted if the BDC and its subsidiaries were one company. The order also would permit asset coverage requirements for senior securities issued by the BDC and its BDC subsidiaries to apply on a consolidated basis. Further, the order would permit certain joint transactions between two of the BDC's subsidiaries and two private venture capital partnerships. The requested order would supersede any exemption granted to any applicant from provisions of the Act and the Exchange Act, effective as of the date of the merger.

Applicants: Allied Capital Corporation (''Allied I''), Allied Investment Corporation (''Investment I''), Allied Capital Financial Corporation (''Financial I''), Allied Capital Corporation II (''Allied II''), Allied Investment Corporation II (''Investment II''), Allied Financial Corporation II (''Financial II''), Allied Capital Lending Corporation (''Allied Lending''), Allied Capital SBLC Corporation (''Allied SBLC''), Allied Capital Advisers, Inc. (''Advisers''), and Allied Capital Commercial Corporation (''Allied Commercial'').

FILING DATE: The application was filed on November 21, 1997.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1997, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1666 K Street, NW., 9th Floor, Washington, DC 20006–2803.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. Applicants are all Maryland corporations. Stock of Allied I, Allied II, Allied Lending, Allied Commercial, and Advisers (the ''Participating Companies'') trades over-the-counter on the Nasdaq Stock Market's National Market. Allied I, Allied II, and Allied Lending have each elected to be regulated as a BDC, as defined under section 2(a)(48) of the Act.[1] Allied Development Corporation (''Development''), Investment I, and Financial I are wholly-owned subsidiaries of Allied I and Investment II and Financial II are wholly-owned subsidiaries of Allied II. Development, Investment I and II, and Financial I and II are registered under the Act as closed-end management investment companies. Development is currently inactive. Investment I and II are licensed small business investment companies (''SBICs'') under the Small Business Investment Act of 1958 (the ''1958 Act''). Financial I and II are specialized small business investment companies (''SSBICs'') under the 1958 Act. Allied Lending participates in the Small Business Administration's (''SBA'') general business loan program pursuant to section 7(a) of the Small Business Act. Allied SBLC and Allied Capital Credit Corporation (''Allied Credit'') are wholly-owned subsidiaries of Allied Lending. Allied SBLC is a BDC and a small business lending company (''SBLC'') participating in the general business loan program pursuant to section 7(a) of the Small Business Act. Allied Credit is currently inactive. Allied Commercial is a real estate investment trust (''REIT'') with three subsidiaries. Advisers is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as the investment adviser to the other Participating Companies. Advisers has one wholly-owned subsidiary established for the purpose of holding an office building which it plans to sell.

2. Applicants have proposed a reorganization in which Allied I, Allied II, Allied Commercial, and Advisers (collectively, the ''Acquired Companies'') will merge into Allied Lending and become ''ACC'' (the ''Consolidation''). ACC will be an adviser registered under the Advisers Act and will operate as an internally managed BDC. Investment I and Financial I will merge with Investment II and Financial II, with Investment I and Financial I as the surviving entities (respectively, the ''Surviving SBIC Subsidiary'' and the ''Surviving SSBIC Subsidiary''). As part of the Consolidation, the SBLC Subsidiary will

[1] Section 2(a)(48) generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a) (1) through (3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small companies whose securities typically are illiquid.

become the ''Surviving SBLC Subsidiary.'' Prior to the Consolidation, Development will be merged with Allied I and Allied Credit will be merged into Allied Lending. In addition, prior to the Consolidation, Allied Commercial's three subsidiaries will be merged into ''Equity Holdings LLC'' and ''Acceptance LLC,'' Allied Lending will establish a REIT subsidiary that will become a subsidiary of ACC following the Consolidation (the ''Surviving REIT Subsidiary''), and Advisers' wholly-owned subsidiary will be liquidated or merged into ''Property LLC,'' which will become a subsidiary of ACC following the Consolidation.

3. Following the Consolidation, ACC will have seven wholly-owned subsidiaries (the ''Surviving Subsidiaries''): Equity Holdings LLC, Acceptance LLC, and Property LLC, and the Surviving SBLC, SBIC, SSBIC, and REIT Subsidiaries. Following the Consolidation, Surviving SBIC and SSBIC Subsidiaries will elect BDC status and will no longer operate as registered investment companies. Therefore, the Surviving SBIC, SSBIC, and SBLC Subsidiaries will all be BDCs (the ''Surviving BDC Subsidiaries''). The Surviving REIT Subsidiary, Equity Holdings LLC, Acceptance LLC, and Property LLC will not be BDCs or registered investment companies. In addition, ACC may in the future create additional wholly-owned subsidiaries (the ''Future Subsidiaries'') which in some cases may be BDCs (the ''Future BDC Subsidiaries'').

4. The Consolidation will be effected pursuant to a merger agreement dated August 14, 1997, and amended and restated on September 19, 1997 (the ''Merger Agreement''). The merger is anticipated to occur on December 31, 1997 (the ''Effective Date''). On the Effective Date, each share of common stock of the Acquired Companies will be converted into shares of Allied Lending in the following amounts: (a) Each share of Allied I will be converted into 1.07 shares of Allied Lending; (b) each share of Allied II will be converted into 1.40 shares of Allied Lending; (c) each share of Allied Commercial will be converted into 1.60 shares of Allied Lending; and (d) each share of Advisers will be converted into 0.31 shares of Allied Lending (collectively, the ''Exchange Ratios''). The Exchange Ratios were based on the relative market prices of the Participating Companies' stock, as discussed below. The exchange agent for the Consolidation will request that, as soon as possible after the Effective Date, shareholders of the Acquired Companies surrender their respective shares. Upon the surrender, the exchange agent will mail the shareholders a confirmation of ownership of ACC common stock. Shares of ACC common stock will be issued in book entry form.

5. The Consolidation will be conditioned on each Participating Company receiving a tax opinion from counsel stating that the Consolidation will be a tax-free event under the Internal Revenue Code of 1986, as amended (the ''Code''). Each Participating Company will be responsible for a *pro rata* portion of expenses related to the Consolidation, based on each Company's total market capitalization as of August 13, 1997, except that each Company will pay the fees and expenses of the financial adviser it engaged to assist it with the Consolidation. Estimated total expenses in connection with the Consolidation are $672,000 for Allied I, $907,000 for Allied II, and $458,000 for Allied Lending. In addition, each of Allied I, Allied II, and Allied Lending have paid $120,000 for the services of its respective independent financial adviser.

6. In June 1997, Morgan Stanley & Co. Incorporated (''Morgan Stanley'') was retained by each of the Participating Companies as the financial adviser to provide advice and assistance with respect to defining objectives, performing valuation analysis, structuring and planning the Consolidation. In addition, each Participating Company retained an independent financial adviser to render an opinion as to the fairness of the Exchange Ratios. Each Participating Company also obtained independent legal counsel to provide that Company's board of directors with legal advice concerning the directors' duties with respect to the consideration of the Consolidation.

7. In determining the relative value of each Participating Company, Morgan Stanley approached the Consolidation as a ''merger of equals.'' In preparing its analysis, Morgan Stanley, among other things, reviewed the strategic rationale for the Consolidation; conducted due diligence sessions with the management of Advisers; developed an independent valuation model for each of the Participating Companies; developed stand-alone valuations of each of the Participating Companies using, among other things, market valuation parameters, discounted cash flow analysis of projected cash flows and analysis of each Participating Company's contribution to ACC; and analyzed the *pro forma* impact of the Consolidation on each Participating Company and its stockholders in terms of contributable earnings and market value.

8. Morgan Stanley also compared the historical price movement of the Participating Companies' stock from June 22, 1994 through July 18, 1997. Morgan Stanley advised the management of Advisers and the board of each of the Participating Companies that the thirty-day period from June 16, 1997 to July 15, 1997 was the most appropriate period over which to measure market value for purposes of developing the Exchange Ratios for each of the Participating Companies. Morgan Stanley considered that during this period, no unusual events had occurred that could have influenced the movement of the Participating Companies' stock prices. In addition, July 15, 1997 was chosen as the ending date because on July 16, 1997 management of Advisers began to contact the independent financial advisers, which increased the number of persons with knowledge of the proposed transaction. The market prices for the stock of the Participating Companies from June 16, 1997 to July 15, 1997 formed the basis for Morgan Stanley's recommendation on valuation.

9. During the period beginning on July 30 and ending on August 5, 1997, each of the Participating Companies held its regular quarterly board of directors meeting, including a session devoted exclusively to the Consolidation. At those meetings, the management of Advisers provided the reasons for the Consolidation and the business plan for ACC. In addition, Morgan Stanley gave its report on its valuation analysis. Following the Morgan Stanley presentation, the respective Participating Company's independent financial adviser indicated that, based on available information provided through that date and subject to further analyses and review, the applicable Exchange Ratio appeared to be fair to the shareholders from a financial point of view. Further, the respective Participating Company's independent legal counsel made a presentation concerning the duties of the board of directors to the applicable Participating Company and its shareholders in connection with the consideration of the Consolidation. No formal action on the merger proposal was sought or taken at these board meetings.

10. Between August 11 and 14, 1997, each Participating Company's board of directors met again to consider and approve the Merger Agreement. Each meeting was attended by the respective independent financial adviser and legal counsel for that Participating Company. The independent financial advisers

presented their opinions that the Exchange Ratio was fair, from a financial point of view, to the shareholders of the respective Participating Company. After considering the presentation of the respective independent financial adviser and after discussion, each of the boards, including the directors who are not interested persons of the Company under section 2(a)(19) of the Act or officers of or otherwise affiliated with any of the other Participating Companies (''Independent Directors''), unanimously approved its Participating Company's participation in the Consolidation and agreed to the terms of the Merger Agreement.

11. The boards of directors considered, among other things: (a) Information concerning the financial performance and condition, business operations, capital levels, asset quality and prospects of each Participating Company, and its projected future financial performance as a separate entity and on a combined basis; (b) current industry, economic, and market conditions and trends; (c) the importance of economies of scale to competing effectively; (d) the Consolidation's structure as a tax-free merger of equals; (e) the possibility that achieving cost savings and operating efficiencies as a result of the Consolidation might not be the same for each Participating Company; (f) the terms and conditions of the Merger Agreement; (g) the current and historical market prices of the common stock of each Participating Company; (h) the opinions of the respective independent financial adviser as to the fairness, from a financial point of view, of the respective Exchange Ratios; (i) the portfolio holdings, liabilities, management, strategic objectives, competitive positions, and prospects of the respective Participating Company; and (j) the impact of the Consolidation on the shareholders and portfolios of each Participating Company and on the employees of Advisers.

12. A proxy statement was filed with the Commission on September 26, 1997. Proxy statements were mailed to shareholders on October 14, 1997, and shareholder meetings are scheduled for November 26, 1997. At least two-thirds of the voting shares of each Participating Company will be required to approve the Consolidation.

13. Applicants request an order to permit the Consolidation. In addition, applicants request an order to permit ACC and its Surviving and Future BDC Subsidiaries (the ''BDC Subsidiaries'') to file reports on a consolidated basis and to engage in certain transactions that would otherwise be permitted if ACC and its BDC Subsidiaries were one company. The order also would permit modified asset coverage requirements for ACC and its BDC Subsidiaries on a consolidated basis and for the Surviving SBLC Subsidiary individually. Further, the order would permit certain joint transactions between the Surviving SBIC and SSBIC Subsidiaries and two private venture capital partnerships.

14. ACC will own all of the outstanding common voting stock or membership interests of the Surviving and Future Subsidiaries (the ''Subsidiaries''). In addition, the following types of transactions may occur among ACC and the Subsidiaries:

(a) ACC may make additional investments in a Subsidiary, as a contribution to capital, purchase of additional stock, or loan.

(b) A Subsidiary may pay dividends and make other distributions to ACC. Each BDC Subsidiary and the Surviving REIT Subsidiary intend to qualify as a regulated investment company and a real estate investment trust, respectively, pursuant to Subchapter M of the Code. As such, each BDC Subsidiary and the Surviving REIT Subsidiary will be required to pay to ACC substantially all of its income in the form of a dividend in order not to incur any Federal income tax.

(c) A Subsidiary may make loans or other advances to ACC or another Subsidiary. None of the Subsidiaries will purchase or otherwise acquire any of the capital stock of ACC.

(d) One or more of ACC and the Subsidiaries may invest in the securities of the same unaffiliated issuer, together or at different times, and deal with such investments separately or jointly. In addition, ACC and the BDC Subsidiaries may engage in purchase or sale transactions with controlled portfolio affiliates of one another.

(e) ACC may purchase all or some of a portfolio investment held by a Subsidiary. Similarly, a Subsidiary may purchase all or some of a portfolio investment held by ACC or another Subsidiary.

(f) One or more of ACC and the Subsidiaries may enter into a financial arrangement with a third-party financial institution in which one or more of ACC and the Subsidiaries are co-borrowers or guarantors.

Applicants' Legal Analysis

A. The Consolidation

1. Section 57(a) generally prohibits, with certain exceptions, sales or purchases of securities between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes the investment adviser to, and any person under common control with, the BDC. Allied I, Allied II, and Commercial could be deemed to be affiliates of Allied Lending under section 57(b) because all are under common control by virtue of having a common investment adviser.

2. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and certain affiliated persons of the company as described in section 2(a)(3) of the Act. Affiliated persons under section 2(a)(3)(C) include persons under common control with the investment company. When the assets of Investment II and Financial II are transferred to Investment I and Financial I, respectively, all four investment companies will be under the common control of ACC.

3. Sections 57(c) and 17(b) of the Act provide that the SEC will exempt a proposed transaction from sections 57(a) and 17(a), respectively, if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; and the proposed transaction is consistent with the policy of each registered investment company concerned and consistent with the general purposes of the Act. Applicants believe that the requested relief from sections 57(a) and 17(a) meets these standards for the reasons discussed below.

4. Applicants believe that the Consolidation will benefit shareholders of the Participating Companies. Applicants state that ACC's increased size, increased portfolio diversity, and mix of current and capital gain income will provide increased benefits for all shareholders. Applicants state that ACC will have the ability to diversify into larger and varied transactions, and that ACC's greater size will provide opportunity for lower-cost debt capital and institutional ownership of its common stock. In addition, applicants believe that the Consolidation will eliminate the need for costly duplication of efforts related to maintaining and reporting for five separate public entities. Applicants further believe that the mergers of Investment II and Financial II into Investment I and Financial I, respectively, will result in similar benefits.

5. Applicants assert that the role of the Independent Directors of Allied I and II and Allied Lending, Morgan Stanley's valuation analysis, the fairness opinions given by each independent

financial adviser, and the representation by separate independent counsel of Allied I and II and Allied Lending ensure that no overreaching on the part of any person will occur in connection with the Consolidation. Applicants state that the Consolidation will be consistent with the public disclosures of each of the Participating Companies and with the general purposes of the Act, as will be the merger of Investment II and Financial II into Investment I and Financial I, respectively. Further, applicants state that the board of directors of each Participating Company has approved the transaction as being in the best interests of the Company.

6. Applicants note that during the process of considering and approving the Consolidation, the board of directors of each Participating Company specifically considered the participation of Advisers in the Consolidation. Applicants state that each board of directors concluded that ACC would be a better business model than a Participating Company would be individually, in part because ACC will be internally managed. Applicants note that with external management, Advisers must not only cover its costs, but must earn a profit for its shareholders and pay a corporate level income tax. Applicants also note that external management creates perceived conflicts of interest because the goals of an external adviser may conflict with the goals of the fund. Applicants state that the directors concluded that Advisers' participation in the Consolidation was fair from a financial point of view and that the management of Advisers will receive no financial benefit from the consolidation to the detriment of any of the other Participating Companies or their shareholders.

B. Operation as One Company

1. Section 12(d)(1)

a. Section 12(d)(1)(A) of the Act, made applicable to BDCs by section 60 of the Act, limits the amount of securities a registered investment company or BDC (or company controlled by the registered investment company or BDC) may hold of other investment companies. Section 12(d)(1)(C) limits the amount of securities of a closed-end investment company that may be acquired by an investment company. Applicants state that any purchase of the voting stock of the Surviving SBLC Subsidiary or a Future BDC Subsidiary by ACC, or a contribution to capital of the Surviving SBLC Subsidiary or of a Future BDC Subsidiary by ACC, may violate section 12(d)(1).[2] In addition, applicants state that section 12(d)(1) may apply to each of the Subsidiaries with respect to their purchase or acquisition of debt securities issued by ACC or each other because each will be a BDC or an entity controlled by a BDC. Further, applicants state that the making of loans or advances by any of the Subsidiaries to ACC or to each other may violate section 12(d)(1).

b. Applicants request an exemption from sections 12(d)(1)(A) and (C) to permit: (a) the acquisition by ACC of any securities of the Surviving SBLC Subsidiary and the future BDC Subsidiaries; and (b) the acquisition by any of the Subsidiaries of any securities representing indebtedness of ACC or of any securities representing indebtedness issued by any of the other Subsidiaries. Applicants request the exemptions to the extent that the transactions would not be prohibited if each Subsidiary were deemed to be part of ACC and not a separate company.

c. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. For the following reasons, applicants believe that the proposal meets this standard.

d. Applicants assert that section 12(d)(1) is intended to prevent certain abuses associated with the pyramiding of investment companies, and that the holding company structure will not entail these types of abuses. Applicants state that these abuses include the investing fund exercising undue influence over the underlying funds, the layering of fees, and the creation of overly complex and confusing structures.

e. Applicants believe that ACC, as the sole shareholder of the Subsidiaries, will have no incentive to act contrary to the interests of a Subsidiary. Applicants also contend that the Consolidation will not result in investors incurring duplicative sales charges or advisory fees, and will result in a structure that is less complex than the current structure. Applicants also note that the parent/subsidiaries structure that will result from the Consolidation will serve a valid business purpose by facilitating more efficient public investment in the alternative asset class of small business debt securities.

2. Section 12(d)(3)

a. Section 12(d)(3) of the Act, made applicable to BDCs by section 60, generally makes it unlawful for any registered investment company to purchase any security issued by an investment adviser to an investment company. Applicants state that the Consolidation could be deemed to involve the purchase or acquisition by Allied I or II, Allied Lending, or ACC of securities issued by Advisers. Applicants request an exemption to permit the purchase of Advisers in connection with the Consolidation.

b. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets the section 6(c) standard for the reasons discussed below.

c. Applicants state that section 12(d)(3) was intended to limit the exposure of registered investment companies to the entrepreneurial risks associated with securities related business and to prevent potential conflicts of interest and reciprocal practices. Applicants state that the Consolidation does not present the potential for these abuses. Applicants believe that the procedures and policies adopted by ACC with respect to its investment advisory operations will ensure that ACC and the Subsidiaries are being operated and managed in the best interests of ACC and its shareholders. Applicants also note that ACC could engage directly in the business of investment management without the need for exemptive relief.

3. Section 18

a. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in section 18(a). Section 18(k) provides for modified asset coverage requirements for SBICs. Section 61 makes section 18, with certain modifications, applicable to a BDC.

b. Applicants believe that section 61 may require that ACC and the BDC Subsidiaries comply with the asset

[2] Rule 60a–1 under the Act exempts from sections 12(d)(1)(A) and (C) the acquisition by a BDC of the securities of a small business investment company licensed under the 1958 Act which is operated as a wholly-owned subsidiary of the BDC. Applicants state that, because the Surviving SBIC and SSBIC Subsidiaries are small business investment companies licensed under the 1958 Act, ACC's acquisition of shares of the Surviving SBIC and SSBIC Subsidiaries will be exempt from sections 12 (d)(1)(A) and (C) under rule 60a–1 under the Act. Applicants state that sections 12(d)(1)(A) and (C) do not apply to the non-BDC Subsidiaries because they are not investment companies.

coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because ACC could be deemed to be an indirect issuer of any class of senior securities issued by the Subsidiaries. In addition, applicants believe that the Surviving SBLC Subsidiary may not be permitted to rely on the modified asset coverage requirements of section 18(k) because section 18(k) does not apply to an SBLC licensee but only to SBIC licensees.

c. Applicants request an exemption under section 6(c) (a) for the Surviving SBLC Subsidiary from sections 18(a)(1)(A) and (B), and (b) for ACC to permit senior securities issued by the Surviving BDC Subsidiaries that are excluded from the individual asset coverage ratio by section 18(k) or this order to be excluded from ACC's consolidated asset coverage ratio. Applicants believe the relief satisfied the section 6(c) standard for the following reasons.

d. Applicants state that the Surviving SBLC Subsidiary should be treated like an SBIC licensee because SBLCs and SBICs are analogous in their common purpose to assist small business in raising capital and both are subject to the regulation and oversight of the SBA. Applicants assert that policy rationale for the section 18(k) exemption is that the SBA's regulation of the permissible leverage of an SBA-licensed investment company is an effective substitute for the SEC's regulation of asset coverage for senior securities issued by a registered closed-end company or a BDC. Applicants state that SBICs, SSBICs, and SBLCs are SBA-licensed investment companies and subject to the SBA's substantive regulations of permissible leverage in their capital structure.

e. Applicants contend that if ACC applies the asset coverage requirements of section 18(a) on a consolidated basis, ACC should be able to apply the same exemptions available to the Surviving BDC Subsidiaries. Applicants also contend that to the extent that the Surviving BDC Subsidiaries on a stand-alone basis are entitled to rely on section 18(k) for an exemption from the asset coverage requirements of section 18(a), there is no policy reason to deny the parent the benefit of the exemption when the parent consolidates its assets with the Surviving BDC Subsidiaries when testing compliance with section 18(a).

4. Sections 2(a)(48) and 55(a)

a. Section 2(a)(48) of the Act generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a) (1) through (3) of the Act and makes available significant managerial assistance with respect to the issuers of these securities. Section 55(a) of the Act requires a BDC to have at least 70% of its assets invested in assets described in sections 55(a) (1) through (6) (''Qualifying Assets''). Qualifying Assets generally include securities issued by eligible portfolio companies as defined in section 2(a)(46) of the Act. Section 2(a)(46)(B) of this definition generally excludes (a) an investment company, as defined under section 3 of the Act, unless the company is an SBIC licensed by the SBA to operate under the 1958 Act and is a wholly-owned subsidiary of the BDC, and (2) a company that would be an investment company but for the exclusion from the definition of investment company in section 3(c) of the Act.

b. Applicants believe that the Surviving SBLC and REIT Subsidiaries may not be deemed eligible portfolio companies because the Surviving SBLC Subsidiary is not an SBIC licensed by the SBA but an SBLC, and the Surviving REIT Subsidiary may be an investment company but for the exclusion from the definition of investment company in section 3(c). Applicants request relief under section 6(c) from section 55(a) to permit ACC to treat the Surviving SBLC Subsidiary as an eligible portfolio company within the meaning of section 2(a) (46) solely to the extent that the Surviving SBLC Subsidiary may not qualify as an eligible portfolio company for reasons stated above. Further, applicants request relief from sections 2(a)(48) and 55(a) to permit the assets held by the REIT Subsidiary, rather than the REIT Subsidiary itself, to be treated as assets held by ACC for purposes of (1) determining whether ACC is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of sections 55(a), (2) determining whether ACC makes available managerial assistance to companies as described in section 2(a)(48), and (3) applying the 70% test in section 55(a). Applicants believe the relief satisfies the section 6(c) standard for the following reasons.

c. Applicants believe that relief for the Surviving Subsidiary is appropriate because the loans to be made by the SBLC will be made to the same category of small business borrowers that represent the type of securities included in the definition of Qualifying Assets. In addition, applicants note that the Surviving SBLC Subsidiary will invest all of its assets in Qualifying Assets and itself will be a BDC.

d. Applicants believe that relief for the REIT Subsidiary is appropriate because all of the voting securities of the REIT Subsidiary will be held by ACC and ACC will control the operations of the REIT Subsidiary, including the acquisition and disposition of its assets. Applicants also state the assets of the REIT Subsidiary will be held by the REIT Subsidiary and not directly by ACC only for bona fide business reasons that are unrelated to the policies underlying the Act and that do not reflect a substantive economic difference from the assets being held by ACC. Applicants therefore contend that the assets held by the REIT Subsidiary are, in economic effect, assets held by ACC, and should be treated as such in determining ACC's compliance with the relevant provisions of sections 2(a) (48) and 55(a) of the Act.

5. Sections 57(a) (1) and (2)

a. As discussed above, sections 57(a) (1) and (2) generally prohibit, with certain exceptions, sales or purchases of securities between BDCs and certain of their affiliates as described in section 57(b) of the Act. Because they are under the common control of ACC, each Subsidiary will be an affiliated person of each other Subsidiary within the meaning of section 57(b).

b. Applicants request relief from sections 57(a) (1) and (2) under section 57(c) to exempt any transaction between ACC and any BDC Subsidiary and any transaction between any BDC Subsidiaries and any Subsidiary with respect to the purchase or sale of securities or other property. In addition, applicants request relief from sections 57(a) (1) and (2) to exempt any purchase or sale transaction between ACC and a controlled portfolio affiliate of a BDC Subsidiary and any purchase or sale transaction between a BDC Subsidiary and a controlled portfolio affiliate of ACC or of another BDC Subsidiary, but only to the extent that any such transaction would not be prohibited if the BDC Subsidiary were deemed to be part of ACC and not a separate company. For the following reasons, applicants believe that the requested relief satisfies the section 57(c) standard.

c. Applicants state that there may be cases when it is in the interest of ACC's shareholders for a BDC Subsidiary to invest in securities of an issuer that may be an affiliated person of ACC or for ACC to invest in securities of an issuer that may be an affiliated person of a BDC Subsidiary. Likewise, applicants state that a BDC Subsidiary may want to invest in securities of an issuer that is an affiliated person of another BDC

Subsidiary. Applicants note that the relief would permit ACC and the BDC Subsidiaries to do what the Act would otherwise permit if they were one company.

6. Sections 21(b) and 57(a)(3)

A. Section 57(a)(3) generally prohibits the borrowing of money or other property by an affiliated person of a BDC, as described in section 57(b), from the BDC except as permitted in section 21(b). Section 21(b) (made applicable to BDCs by section 62) of the Act generally prohibits loans between BDCs and persons controlling or under common control with the BDC, except for loans to a company that owns all of the outstanding securities of the BDC. As described above, each Subsidiary will be under the common control of ACC and, therefore, will be affiliated under section 57(b) and subject to section 21(b).

b. Applicants request relief from section 57(a)(3) under section 57(c) to exempt any transaction between a BDC Subsidiary and another Subsidiary with respect to the borrowing of money or other property and any borrowing of money or other property by ACC from a BDC Subsidiary. Applicants also request relief from section 21(b) under section 6(c) to exempt the lending of money or other property by a BDC Subsidiary to ACC or another Subsidiary. For the following reasons, applicants believe that the requested relief satisfies the section 57(c) standard.

c. Applicants state that the proposed transactions will have no substantive economic effect because they will either be between ACC and its wholly-owned Subsidiaries, or be between Subsidiaries under the common ownership of ACC. Applicants note that the relief would permit ACC and its Subsidiaries to do what the Act would otherwise permit if they were one company.

7. Section 57(a)(4) and Rule 17d–1

a. Section 17(d) and rule 17d–1 make it unlawful for an affiliated person of a registered investment company or any affiliated person of an affiliated person, acting as principal, to participate in or effect any joint transaction in which the registered company or a company it controls participates, unless the transaction has been approved by the SEC. Section 57(a)(4) imposes substantially the same prohibitions on joint transactions involving BDCs and certain of their affiliates as described in section 57(b). Section 57(i) provides that the rules and regulations under section 17(d) shall apply to transactions subject to section 57(a)(4) in the absence of rules under that section. No rules with respect to joint transactions have been adopted under section 57(a)(4) and, therefore, the standard set forth under rule 17d–1 governs applicants' request.

b. Applicants state that a joint transaction in which a BDC Subsidiary and ACC or another Subsidiary participates will be deemed to be prohibited under section 57(a)(4). Therefore, applicants request relief under section 57(i) and rule 17d–1 to permit any joint transaction in which a BDC Subsidiary and ACC or another Subsidiary participate to the extent that the transaction will not be prohibited if the BDC Subsidiary were deemed to be part of ACC and not a separate company.

c. In passing upon applications filed pursuant to rule 17d–1, the SEC considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that this standard is satisfied because the request would simply permit ACC and its Subsidiaries to conduct their operations as if they were one company.

C. Consolidated Reporting

1. Section 54 of the Act provides that a closed-end investment company may elect BDC treatment under the Act if the company has registered or filed a registration statement under section 12 of the Exchange Act for a class of its equity securities. Section 13(a) of the Exchange Act requires that issuers of securities registered under the Exchange Act file certain information and reports with the SEC. Applicants request an order that the BDC Subsidiaries be exempt from the reporting requirements of section 13(a) of the Exchange Act in order to permit them to file consolidated reports with ACC.[3]

2. Section 12(h) of the Exchange Act provides that the SEC may exempt an issuer from section 13 of the Exchange Act if the SEC finds that by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, the exemption is not inconsistent with the public interest or the protection of investors. Applicants believe that the requested exemption meets this standard for the following reasons.

3. Applicants state that each BDC Subsidiary will have only one investor and no public investors and, therefore, there will be no trading in the securities of the BDC Subsidiaries. Applicants further state that the nature and extent of the activities of the BDC Subsidiaries will be fully disclosed through consolidated reporting in accordance with Commission rules and generally accepted accounting principles.

D. Co-Investing

1. Allied Venture Partnership (''Venture'') and Allied Technology Partnership (''Technology'') are private venture capital limited partnerships organized under the laws of the District of Columbia. They are not registered under the Act in reliance on the exemptions provided by sections 3(c)(1) and (7) of the Act. After the Consolidation, ACC will be the investment adviser to Venture and Technology.

2. In reliance on certain prior orders (''Prior Orders''), Allied I and its wholly-owned subsidiaries, and Allied II and its wholly-owned subsidiaries have co-invested with Venture and Technology.[4] Venture and Technology are fully invested in portfolio companies and are not expected to raise additional capital or to make new investments (other than possible ''follow-on investments'' as permitted by the Prior Orders). Venture and Technology are gradually liquidating their existing investments in portfolio companies and distributing the proceeds to their partners. The Prior Orders were subject to detailed conditions regarding liquidation transactions and follow-on investments (''Co-investing Conditions'').

3. As noted above, section 57(a)(4) and rule 17d–1 generally prohibit joint transactions involving BDCs and certain of their affiliates unless the SEC has approved the transaction. Venture and Technology will be affiliated persons of the Surviving SBIC and SSBIC Subsidiaries within the meaning of section 57(b) because they all will be under the common control of ACC. Because many of the investments being liquidated are previous co-investments, the liquidation transactions could be deemed to constitute joint transactions otherwise prohibited by section 57(a)(4) and rule 17d–1. The Surviving SBIC and SSBIC Subsidiaries request an order

[3] Applicants state that there is no separate requirement under the Exchange Act that the BDC Subsidiaries register their shares because they do not have the requisite number of shareholders under the relevant provisions of the Exchange Act.

[4] Investment Company Act Release Nos. 14694 (Aug. 26, 1985) (notice) and 14725 (Sept. 17, 1985) (order); 15787 (June 9, 1987 (notice) and 15833 (June 30, 1987) (order; and 17124 (Sept. 1, 1989) (notice) and 17155 (Sept. 26, 1989) (order).

pursuant to section 57(i) and rule 17d–1 to permit them to participate in the liquidation transactions and possible follow-on investments with Venture and/or Technology, to the extent that the transactions may otherwise be prohibited by section 57(a)(4) and rule 17d–1.

4. Applicants believe that the transactions satisfy rule 17d–1(b)'s standard, as described above, and that the Co-investing Conditions are unnecessary, because ACC, the parent of the SBIC and SSBIC Subsidiaries, will be internally managed; Venture and Technology are in the process of liquidation and will not be engaging in a broad range of transactions; and Venture and Technology and the SBIC and SSBIC Subsidiaries will be treated on an equal basis in any transaction. Applicants also contend that the relief is consistent with rule 57b–1, which exempts from section 57(a)(4) any transactions in which the BDC controls the relevant affiliate. Applicants asset that the SBIC and SSBIC Subsidiaries should be deemed to control Venture and Technology, for purposes of rule 57b–1, because they are wholly-owned subsidiaries of ACC.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. ACC will at all times own and hold, beneficially and of record, all of the outstanding voting capital stock of the Subsidiaries.

2. No person will serve or act as investment adviser to any Subsidiary unless the directors and stockholders of ACC will have taken the action with respect thereto also required to be taken by the directors and sole stockholder of the Subsidiary.

3. The Consolidation will not be consummated unless it has been approved by the holders of a majority of outstanding common stock of Allied I, Allied II, and Allied Lending.

4. ACC will: (a) file with the Commission, on behalf of itself and the Subsidiaries, all information and reports required to be filed with the SEC under the Exchange Act and other applicable federal securities laws, including information and financial statements prepared solely on a consolidated basis as to ACC and the Subsidiaries, these reports to be in satisfaction of any separate reporting obligations of the Subsidiaries; and (b) provide to its stockholders the information and reports required to be disseminated to ACC's stockholders, including information and financial statements prepared solely on a consolidated basis as to ACC and the Subsidiaries, these reports to be in satisfaction of any separate reporting obligations of the Subsidiaries. Notwithstanding anything in this condition, ACC will not be relieved of any of its reporting obligations, including, but not limited to, any consolidating statement setting forth the individual statements of the Subsidiaries required by rule 6–03(c) of Regulation S–X.

5. ACC and the Subsidiaries may file on a consolidated basis under condition 4 above only so long as the amount of ACC's total consolidated assets invested in assets other than (a) securities issued by the Subsidiaries or (b) securities similar to those in which the Subsidiaries invest, does not exceed ten percent.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–31395 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22901; File No. 812–10788]

The Western National Life Insurance Company, et al.; Notice of Application

November 21, 1997.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under Section 26(b) of the Investment Company Act of 1940 (''1940 Act'') approving the proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants request an order approving the substitution of shares of the Salomon Brothers U.S. Government Securities Portfolio of WNL Series Trust (the ''Salomon Portfolio'') for shares of the Black Rock Managed Bond Portfolio of WNL Series Trust (the ''BlackRock Portfolio'') to fund individual fixed and variable deferred annuity contracts (the ''Contracts'') issued by Western National Life Insurance Company (''Western National'').

APPLICANTS: Western National and WNL Separate Account A (the ''Account'').

FILING DATE: The application was filed on September 17, 1997.

HEARING OR NOTIFICATION OF HEARING: And order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 16, 1997, and accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Raymond A. O'Hara III, Esq., Blazzard, Grodd & Hasenauer, PC., 943 Post Road East, Westport, Connecticut 06880.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Western National, a stock life insurance company incorporated in Texas, is a wholly-owned subsidiary of Western National Corporation. American General Life Insurance Company (''AG Life''), a Missouri-domiciled life insurer, owns approximately 40% of Western National Corporation. In turn, AG Life is a wholly-owned subsidiary of American General Corporation, also a Texas corporation. Western National is the depositor of the Account.

2. The Board of Directors of Western National authorized the Account on November 9, 1994. The Account is registered under the 1940 Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933 (''Securities Act'') (File No. 33–86464). The Account currently is divided into eight sub-accounts, each of which reflects the investment performance of a corresponding portfolio of WNL Series Trust (the ''Trust'').

3. The Trust was organized as a Massachusetts business trust on December 12, 1994. It is registered under the 1940 Act as an open-end management investment company. The

Trust is a series investment company that is currently comprised of eight portfolios, two of which are the BlackRock and Salomon Portfolios. WNL Investment Advisory Services, Inc. (''WNL Advisory''), a subsidiary of Western National Corporation, is the investment adviser to the Trust.

4. WNL Advisory has engaged sub-advisors for each of the portfolios of the Trust. The Sub-Advisor for the BlackRock Portfolio is BlackRock Financial Management. The Sub-Adviser for the Salomon Portfolio is Salomon Brothers Asset Management, Inc.

5. The BlackRock Portfolio seeks to provide a high total return consistent with moderate risk of capital and maintenance of liquidity by investing primarily in the broad sector of the fixed-income market, including U.S. government and agency securities, corporate securities, private placements, and asset-backed and mortgage-related securities, including residential and commercial mortgage-backed securities. The Salomon Portfolio seeks a high level of current income by investing a substantial portion of its assets in debt obligations and mortgage-backed securities issued or guaranteed by the U.S. government and its agencies or instrumentalities and collateralized mortgage obligations backed by such securities.

6. Since their inception, WNL Advisory has voluntarily waived all or a portion of its advisory fees from the BlackRock and Salomon Portfolios. Currently, until May 1, 1998, WNL Advisory has undertaken to waive those portions of its advisory fees which are in excess of the amounts payable by it to the Sub-Advisors for the BlackRock and Salomon Portfolios. In addition, since inception, Western National has reimbursed portions of the expenses of the BlackRock and Salomon Portfolios. Currently, Western National has undertaken to bear until May 1, 1998, all operating expenses of both portfolios, excluding the compensation of WNL Advisory, that exceed .12% of the portfolios' average daily net assets. WNL Advisory is under no legal obligation to continue waiving its advisory fees nor is Western National under any obligation to continue reimbursing expenses. State Street Bank and Trust Company, the Trust's custodian and sub-administrator, also has waived certain fees with respect to both portfolios.

7. As a result of these fee waivers and expense limitation agreements, the expense ratio (annualized) for the BlackRock Portfolio for the year ending December 31, 1996 (from the date of inception of January 2) was .28%. In the absence of these waivers and expense limitation agreements, the expense ratio would have been 3.93%. For the six-month period ended June 30, 1997, the expense ratio (annualized) was .42%. In the absence of the waivers and expense limitation agreements, it would have been 4.38%. The (non-annualized) total returns for the BlackRock Portfolio for these twelve-month and six-month periods were 3.76% and 3.20%, respectively. In the absence of the fee waivers and expense limitation agreements, the total returns would have been lower.

8. As a result of the fee waivers and expense limitation agreements, the expense ratio (annualized) for the Salomon Portfolio for the year ending December 31, 1996 (from the date of inception of February 6) was .22%. In the absence of the fee waivers and expense limitation agreements, it would have been 5.26%. For the six-month period ended June 30, 1997, the expense ratio (annualized) was .35%. In the absence of these waivers and expense limitation agreements, it would have been 5.59%. The (non-annualized) total returns for the Salomon Portfolio for these twelve-month and six-month periods were 3.40% and 3.35%, respectively. These numbers would have been lower absent the fee waivers and expense limitation agreements.

9. As of June 30, 1997, the BlackRock Portfolio and Salomon Portfolio had $3.6 million and $2.5 million in net assets, respectively.

10. Applicants state that the BlackRock Portfolio is quite small when compared with many other similar investment portfolios of open-end management companies available as investment vehicles for variable annuity contracts. Furthermore, after experiencing slow sales, management of Western National determined that it was unlikely that the BlackRock Portfolio would grow to a sufficient size to promote consistent investment performance or to absorb operating expenses. As of September 30, 1997, shares of the BlackRock Portfolio were no longer available for sale and no transfers could be made into the BlackRock Portfolio Sub-Account (however, dollar cost averaging transfers to the BlackRock Portfolio Sub-Account will be permitted until the date of substitution).

11. Applicants propose that Western National substitute shares of the Salomon Portfolio for shares of the BlackRock Portfolio, by redeeming shares of the BlackRock Portfolio in cash and purchasing with the proceeds shares of the Salomon Portfolio.

12. The proposed substitution will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or in the dollar value of his or her investment in the Account. Contract owners will not incur any fees or charges as a result of the proposed substitution nor will their rights or Western National's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitution, including legal, accounting and other fees and expenses, will be paid by Western National. In addition, the proposed substitution will not result in the imposition of any tax liability on Contract owners. The proposed substitution will cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitution than before the proposed substitution.

13. By supplements to the prospectus for the Account dated September 25, 1997, all owners and prospective owners were notified of the Applicants' intention to take the necessary actions, including seeking the order requested by the Applicants, to affect the substitution described herein. The supplement also apprised Contract owners that, from the date of the supplement until the date of the proposed substitution, owners may transfer any or all of their Contract value under a Contract invested in the Sub-Account for the BlackRock Portfolio to another Sub-Account of the Account, without that transfer counting as one of a limited number of transfers permitted in a Contract year free of charge. In addition, the supplement will inform Contract owners that for a period of 30 days following the proposed substitution, Western National will permit transfers of the cash value under a Contract invested in the Sub-Account for the Salomon Portfolio to any other Sub-Account of the Account without any limitation or charge being imposed.

14. In addition to the prospectus supplements distributed to owners and prospective owners of Contracts, within 5 days after the proposed substitution, all owners who were affected by the substitution will be sent a written notice informing them that the substitution was carried out and reiterating their right to make transfers from the Sub-Account for the Salomon Portfolio to any other Sub-Account of the Account for a period of 30 days without any limitation or charge being imposed.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides in pertinent part that ''it shall

be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' The legislative history of Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants state that Western Life has reserved the right to substitute securities held by the Sub-Accounts of the Account and that this right is disclosed in the Contracts and prospectus for the Contracts.

3. Applicants represent that the Salomon Portfolio is a suitable and appropriate investment vehicle for Contract owners. Applicants assert that the Salomon Portfolio has a lower advisory fee and a lower expense ratio than the BlackRock Portfolio. Applicants also assert that the Salomon Portfolio has a similar investment objective, and to date has experienced an investment return comparable to the BlackRock Portfolio. Applicants anticipate that after the proposed substitution, the Salomon Portfolio will provide Contract owners with comparable or more favorable investment results than would be the case if the proposed substitution did not take place.

4. Applicants represent that the Salomon Portfolio has similar investment policies to the BlackRock Portfolio, with each investing in many of the same types of fixed income securities.

5. Applicants generally submit that the proposed substitution meets the standards that the Commission and its staff have applied to substitutions that have been approved by the Commission.

Conclusion

Applicants submit that, for the reasons summarized above, the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–31396 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39347; File No. SR–Amex–97–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Trading Differentials for Options Contracts

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend *Rules* 952 and 951C to adopt a procedure that would allow the Exchange to establish the minimum fractional change (or trading increments) for options. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Exchange *Rule* 952 provides that the minimum fractional change for stock options trading at $3.00 or higher shall be one-eighth and for stock options trading under $3.00 shall be one-sixteenth. Additionally, *Rule* 951C provides that the minimum fractional change for stock index options shall be one-eighth for stock index options trading at a premium greater than $300.00 and stock index options less than $300.00 shall be one sixteenth. The Exchange now proposes to amend Rules 952 and 951C to give the Board of Governors the authority to establish the minimum fractional changes for options. Until such time as the Board determines to use its authority to change the minimum fractional changes the current rules described above will apply. The proposal will allow the Exchange to revise its minimum fractional changes quickly in response to changes adopted in the underlying stock markets and at the other options exchanges. When the Board of Governors has determined to change the minimum trading increments, the Exchange will designate such a change as a stated policy, practice, or interpretation with respect to the administration of Rules 952 and 951C within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission.

As derivatives securities, the prices of options are determined in reference to the prices of the underlying securities. Consequently, the Exchange believes that where practicable, the Exchange should have minimum increments comparable to those applicable to the securities underlying its options.[3]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Exchange Act Rel. No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (Commission order approving a change in the minimum increment to 1/16 for securities listed on the American Stock Exchange); Exchange Act Rel. No. 38678 (May 27, 1997), 62 FR 30363 (June 3, 1997) (Commission order approving a change in the minimum increment to 1/16 for Nasdaq-listed securities); and Exchange Act Rel. No. 38897 (Aug. 1, 1997), 62 FR

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[4] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–41 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31391 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

42847 (Aug. 8, 1997) (Commission order approving a change in the minimum increment to 1/16th for NYSE listed-securities).

[4] 15 U.S.C. 78f(b).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39348; File No. SR–CBOE–97–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Change the Minimum Increment for Bids and Offers in Options

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 25, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 17, 1997, the Exchange submitted to the Commission an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.42 by adopting a procedure that would allow the Exchange to establish options trading differentials on an expedited basis. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Exchange Rule 6.42 to give the Board of Directors the authority to establish the minimum trading increments for option contracts. Currently, Rule 6.42 states that bids and offers shall be expressed in eighths of $1 unless a different increment is approved by the Floor Procedure Committee for an option contract of a particular series. An interpretation to the Rule states that bids and offers for all option series trading below $3 shall be expressed in sixteenths of a dollar. Until such time as the Board determines to make a change the current standards will apply.

The proposed change would allow the Exchange to change the trading increments on an expedited basis and thus, allow the Exchange to respond appropriately to changes in the minimum trading increment in the markets for the securities underlying CBOE options or to changes in the minimum trading increments for one of the other options exchanges. When the Board of Directors determines to change the trading increments, the Exchange will designate such change as a stated policy, practice, or interpretation with respect to the administration of Rule 6.42 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act and will file a rule change for effectiveness upon filing with the Commission.

There has been a movement within the industry to reduce the minimum trading and quotation increments

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] By adding the term ''appropriate'' before the term ''Floor Procedure Committee'' in the text of the rule, the amendment clarified that the decision to change the increments with respect to a particular class of options will be made by whichever Floor Procedure Committee has jurisdiction over trading in that option class. The amendment also replaced the original Exhibit 1 that was sent to the Commission with a revised Exhibit 1. See Letter from Timothy H. Thompson, CBOE, to Christine Richardson, Division of Market Regulation, Commission (Nov. 14, 1997) (''Amendment No. 1'')

imposed by the various SROs.[4] As derivative securities, the prices of options are determined in reference to the prices of the underlying securities. Consequently, the Exchange believes that where practicable, the Exchange should have minimum increments comparable to those applicable to the securities underlying CBOE options.

The proposed rule change would give the Exchange the flexibility to follow the suit of the principal exchanges for the underlying securities without having to continually update its rules but at the same time would give the Exchange the flexibility it needs to deviate from the minimum increments established by the principal markets for the underlying securities in the event that the CBOE's systems were not immediately able to handle such increments. The Exchange, therefore, believes the quality of the market for CBOE options will be enhanced by allowing for more accurate pricing of CBOE options.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–49 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31388 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

[4] See Exchange Act Rel. No. 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (Commission order approving a change in the minimum increment to 1/16th for securities listed on the American Stock Exchange); Exchange Act Rel. No. 38678 (May 27, 1997), 62 FR 30363 (June 3, 1997) (Commission order approving a change in the minimum increment to 1/16th for Nasdaq-listed securities); and Exchange Act Rel. No. 38897 (Aug. 1, 1997), 62 FR 42847 (Aug. 8, 1997) (Commission order approving a change in the minimum increment to 1/16th for NYSE listed-securities).

[5] 15 U.S.C. 78f(b).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39342; File No. SR–CHX–97–29]

Self-Regulatory Organizations; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to a Policy of the Specialist Assignment and Evaluation Committee

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 27, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XXX, Rule 1, Interpretation and policy .01 to amend the current one-year pilot program concerning a policy of the Exchange's Committee on Specialist Assignment and Evaluation (''CSAE'') relating to the time periods for which a co-specialist must trade a security before deregistering as the specialist for the security. This change would be in effect for the remainder of the current one-year pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 8, 1997, the Commission approved a rule change on a one year pilot basis relating to the time periods for which a co-specialist must trade a security before deregistering as the specialist for the security.[2] The pilot program currently expires on September, 1998. The purpose of the proposed rule change is to make a slight modification to this pilot program.

The Exchange's CSAE is responsible for, among other things, appointing specialists and co-specialists and conducting deregistration proceedings

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 39028 (September 8, 1997), 62 FR 48329.

in accordance with Article XXX of the Exchange's rules.[3] Seven circumstances may lead to the need for assignment or reassignment of a security.[4] One such circumstance is by specialist request.

Currently, the CSAE will initiate a reassignment proceeding if it believes that such action is called for. Using this standard, the CSAE's policy under the current one year pilot program is as follows:

For a security that was awarded to a co-specialist in competition, such co-specialist is required to trade the security awarded in competition for one year before being able to deregister in the security if no other specialist will be assigned to the security after posting. Two-years must elapse before an intra-firm transfer of the issue (i.e., a transfer of the issue to another co-specialist in the same specialist unit) is normally permitted without posting.

For a security that was awarded to a co-specialist without competition, such co-specialist is required to trade the security awarded without competition for a three month period before being able to deregister in the security if no other specialist will be assigned to the security after posting. A six-month time period must elapse before an intra-firm transfer is normally permitted.

At this time, the Exchange believes that one aspect of the new policy should be amended and one aspect should be clarified. Specifically, the Exchange believes that the requirement that six months elapse before permitting an intra-firm transfer of an issue that was awarded without competition is too onerous. Instead, the Exchange believes that, where the security was awarded without competition, there should be no minimum time period before the intra-firm transfer will be considered by the CSAE without posting. Because the security was awarded without competition from any competing applicant from another specialist unit, no one would be disadvantaged if the security is transferred to another co-specialist in the same specialist unit without waiting for six months to elapse, provided the transfer is to a qualified co-specialist, which determination shall be made by the CSAE.

Without this change, a specialist unit might be tempted to return the security to the cabinet (which can be done after only three months) and having another co-specialist in the same unit apply to take it back out, or, for less profitable issues, not apply for the security in the first place. This change will further the Exchange's goal of increasing the depth and liquidity of the market by encouraging specialists to apply for issues that might otherwise remain in the cabinet.

Second, the Exchange would like to clarify the intra-firm transfer policy when a security is awarded with competition. While the two-year period is appropriate for permitting an intra-firm transfer without posting, the Exchange believes that a specialist unit should be given an opportunity for an intra-firm transfer after one year. As a result, for securities awarded with competition, after one year has elapsed, the CSAE will consider requests for an intra-firm transfer if the security is posted, in order to permit other specialist units and co-specialists to apply to trade the issue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the Exchange. All submissions should refer to file number SR–CHX–97–29 and should be submitted by [insert date 21 days from the date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed CHX's proposed rule change and has concluded, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Sections 6(b)(5) in that it is designed to prevent fraudulent, manipulative acts and practices and to promote just and equitable principles of trade, and to remove impediments to and protect the mechanism of a free and open market and to protect investors and the public interest.[6]

The Commission finds that the amended policy, as proposed, should result in a reasonable balance between the interests of consistency and continuity with respect to the trading of an issue by a particular specialist and that of a specialist in having the flexibility to deregister in an unprofitable issue. Under the pilot program as approved in September, for a security that was awarded in competition, a co-specialist wishing to transfer that issue to another co-specialist in the firm before the two years had elapsed might find it easier to deregister after one year and have another co-specialist in the specialist unit apply for the issue again. Similarly, for a security that was awarded without competition, a co-specialist would deregister within three months to allow another co-specialist in the firm to apply for the security again rather than have to wait the full six months. The change will remove the need for deregistration prior to making an intra-firm transfer.

Overall, the Commission concludes that the proposed changes are minor but may encourage CHX specialists to register in additional securities that might otherwise remain in the cabinet. This, in turn, could add to the depth

[3] CHX Rules, Article IV, Rule 4.

[4] CHX Rules, Article XXX, Rule 1, Interpretation and Policy .01.

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule, the Commission notes that is has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and liquidity of the market for such additionally listed securities.

Finally, the Commission notes that the proposed change to the pilot program does not alter the notification requirement to order entry firms, and the effective date of a specialist's deregistration.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication notice thereof in the **Federal Register**. This will permit the changes to be in effect for as much of the pilot program as possible thereby allowing CHX to better assess the effects of these changes to be assessed prior to the expiration of the pilot. In addition, the rule change that implemented the pilot program was published in the **Federal Register** for the full comment period and no comments were received. Accordingly, the Commission believes that it is consistent with Sections 6 and 19(b) of the Act [7] to accelerate approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–97–29) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31394 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78f and 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CAR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39346; File No. SR–NASD–97–79]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees and Hearing Session Deposits for the Arbitration of Claims by Public Investors, Members and Associated Persons

November 21, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1997,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rules IM–10104, 10205 and 10332 of the NASD's Code of Arbitration Procedure (''Code'') to increase the arbitrator honoraria and the arbitration filing fees and hearing session deposits for intra-industry and public investor arbitrations administered by NASD Regulation. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

IM–10104. Arbitrator's Honorarium

All persons [serving on panels of arbitrators pursuant to Rule 10104 of] *selected to serve as arbitrators pursuant to* the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session *(including a prehearing conference)* in which they participate [while in the performance of said duties].

The honorarium shall be $[150]*200* for [a single] *each hearing* session [, $225 for a double session], $50 for travel to a canceled hearing, and $[50]*75* per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing [is $75 per case] *shall be $125.*

10205. Schedule of Fees for Industry and Clearing Controversies

(a) At the time of filing a Claim, Counterclaim, Third Party Claim, or Cross-Claim in an industry or clearing controversy which is required to be submitted to arbitration before the Association as set forth in Rule 10201, above, a party *who is a member* shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Association in the amounts stated in paragraph (k) unless such fee or deposit is specifically waived by the Director of Arbitration. *A party who is an associated person shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified for customer claimants in Rule 10332. If the associated person is a joint claimant with a member, the member shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified in paragraph (k) of this Rule.* Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the paragraph (k) below.

(b) No change.

(c) No change.

(d) No change.

(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee assessed *on a party who is a member* shall be $500. If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the hearing session deposit to be remitted by a party shall be *$1000* [$600]. These amounts may be adjusted by the Director of Arbitration or the panel of arbitrators may require *the maximum amount specified in the schedule* [$1,000].

(f) No change.

(g) No change.

(h) No change.

(i) If an eligible matter is submitted for arbitration as a large and complex case, under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334(b), the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over *$10,000,000* [$5,000,000].

(j) No change.

(k) Schedule of Fees

[1] The NASD submitted Amendment No. 1 to the proposed rule filing on November 14, 1997, the substance of which is incorporated into this notice and the proposed rule filing. *See* letter from John M. Ramsay, Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated November 12, 1997 (''Amendment No. 1'').

SCHEDULE OF FEES

Amount in dispute (exclusive of interest and expenses)	Claim filing fee	Deposit for cases to be decided on the paper record [simplified[1]]	Hearing Session Deposit	
			One arbitrator[1][2]	Three arbitrators[2][3]
$.01–$1,000	$*200* [500]	$*25* [75]	$*25* [300]	NA
$1,000.01–$2,500	*$300* [500]	*$50* [75]	$*50* [300]	NA
$2,500.01–$5,000	$*400* [500]	$*125* [75]	$*125* [300]	NA
$5,000.01–$10,000	$500	$*250* [75]	$*250* [300]	NA
$10,000.01–*$25,000*	*$750*	$*300*	$*450*	*NA*
$*25,000.01*–$30,000	$*1,000* [500]	NA	$*450* [300]	$–600
$30,000.01–$50,000	$*1,000* [500]	NA	$*450* [300]	$–600
$50,000.01–$100,000	$*1,000* [500]	NA	$*450*[3][300[4]]	$*750* [600]
$100,000.01–$500,000	$*1,000* [500]	NA	$*450*[3][300[4]]	$–*1,125* [750]
$500.000.01–*$1,000,000*	*$1,250*	*NA*	$*450*[3]	$*1,200*
$1,000,000.01–$5,000,000	*$2,000* [500]	NA	$*450*[3][300[4]]	$*1,200* [1,000]
[Over]$5,000,000.*01–$10,000.000.00*	*$2,500* [500]	NA	$*450*[3][300[4]]	$*1,200*[1,500]
Over $10,000,000	*$5,000*	*NA*	$*450*[3]	*$1,200*

[1 Simplified Arbitration (Without Hearing)]
[1][2] *The dispute is resolved by o*[O]ne *a*[A]rbitrator *per hearing session, including pre-hearing conferences.* [(Per hearing session)]
[2][3] *The dispute is resolved by t*[T]hree [or more] *a*[A]rbitrators *per hearing session.* [(Per hearing session)]
[3][4] *Fee applies only to p*[P]re-hearing *c*[C]onferences [Only] *with a single arbitrator.*

10332. Schedule of Fees for Customer Disputes

(a) No change.
(b) No change.
(c) No change.
(d) No change.
(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee for a public customer shall be $250 and the non-refundable filing fee for an industry party shall be $500[.00]. The hearing session deposit to be remitted by a party shall be $*1000* [$600] or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed *the maximum amount specified in the schedule* [$1,000].
(f) No change.
(g) No change.
(h) If an eligible matter is submitted for arbitration as a large and complex case under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334(b), the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over *$10,000,000* [$5,000,000].
(i) No change
(j) No change
(k) Schedule of Fees

For purposes of the schedule of fees, the term ''claim'' includes Claims, Counterclaims, Third Party Claims, and Cross-Claims. Any such claim made by a customer *or associated person* is *treated as* a customer claim *for purposes of the schedule of fees.* Any such claim made by a member [or associated person of a member] is an industry claim.

CUSTOMER *or Associated Person* CLAIMANT

Amount in dispute (exclusive of interest and expenses)	Claim filing fee	Deposit for cases to be decided on the paper record [simplified [1]]	Hearing session deposit	
			One arbitrator [1][2]	Three arbitrators [2][3]
$.01–$1,000	*$ 25* [15]	*$ 25* [15]	*$ 25* [15]	NA
$1,000.01–$2,500	$ 25	*$ 50* [25]	*$ 50* [25]	NA
$2,500.01–$5,000	$ 50	$125 [75]	*$125*[100]	NA
$5,000.01–$10,000	$ 75	*$250* [75]	*$250* [200]	NA
$10,000.01–*$25,000*	*$125* [100]	*$300* [NA]	*$450*	*NA*
$25,000.01–$30,000	*$150*	*NA*	*$450*[300]	$ 400
$30,000.01–$50,000	*$175* [120]	NA	*$450*[300]	*$ 600*[400]
$50,000.01–$100,000	*$225* [150]	NA	*$450*[3][300[4]]	*$ 750*[500]
$100,000.01–$500,000	*$300* [200]	NA	*$450*[3][300[4]]	*$1,125*[750]
$500,000.01–*$1,000,000*	*$375* [250]	NA	*$450*[3][300[4]]	*$1,200*[1,000]
$1,000,000.01–$3,000,000	*$500*	*NA*	*$450*[3]	*$1,200*
$3,000,000.01–$5,000,000	*$600*	*NA*	*$450*[3]	*$1,200*
[Over]$5,000,000.01–*$10,000,000*	*$600* [300]	NA	*$450*[3][300[4]]	*$1,200*[1,500]
Over $10,000,000	*$600*	*NA*	*$450*[3]	*$1,200*

[1 Simplified Arbitration (Without Hearing)].
[1][2] *The dispute is resolved by o*[O]ne *a*[A]rbitrator *per hearing session, including pre-hearing conferences.* [(Per Hearing Session)].
[2][3] *The dispute is resolved by t*[T]hree [or more] *a*[A]rbitrators *per hearing session.* [(Per hearing session)].
[3][4] *Fee applies only to p*[P]re-hearing *c*[C]onferences [Only] *with a single arbitrator.*

MEMBER [INDUSTRY] CLAIMANT

Amount in dispute (exclusive of interest and expenses) arbitrators [2] [3]	Claim filing fee	Deposit for cases to be decided on the paper record [simplified [1]]	Hearing Session Deposit	
			One	Three arbitrator [1] [2]
$.01–$1,000	$*200* [500]	$*25* [75]	$*25* [300]	NA
$1,000.01–$2,500	$*300* [500]	$*50* [75]	$*50* [300]	NA
$2,500.01–$5,000	$*400* [500]	$*125* [75]	$*125* [300]	NA
$5,000.01–$10,000	$500	$*250* [75]	$*250* [300]	NA
$10,000.01–*$25,000*	*$750*	*$300*	*$450*	*NA*
$*25,000.01*–$30,000	*$1,000* [500]	NA	*$450* [300]	$600
$30,000.01–$50,000	*$1,000* [500]	NA	*$450* [300]	$600
$50,000.01–$100,000	*$1,000* [500]	NA	*$450* [3][300 [4]]	*$750* [600]
$100,000.01–$500,000	*$1,000* [500]	*NA*	*$450* [3][300 [4]]	*$1,125* [750]
$500,000.01–$*1,000,000*	*$1,250*	NA	*$450* [3]	*$1,200*
$*1,000,000.01*–$5,000,000	*$2,000* [500]	NA	*$450* [3][300 [4]]	*$1,200* [1,000]
[Over] $5,000,000.*01–$10,000,000*	*$2,500* [500]	NA	*$450* [300 [4]]	*$1,200* [1,500]
Over $10,000,000	*$5,000*	*NA*	*$450* [3]	*$1,200*

[1 Simplified Arbitration (Without Hearing)]
[1] [2] *The dispute is resolved by o*[O]ne *a*[A]rbitrator *per hearing session, including pre-hearing conferences.* [(Per Hearing Session)]
[2] [3] *The dispute is resolved by t*[T]hree [or more] *a*[Arbitrators *per hearing session.* [(Per hearing session)]
[3] [4] *Fee applies only to p*[P]re-hearing *c*[C]onferences [Only] *with a single arbitrator.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Introduction

NASD Regulation is proposing to amend the NASD's Code of Arbitration Procedure to increase the filing fees and hearing session deposits charged to public investors, member firms and associated persons for arbitrating disputes under the Code. In addition, NASD Regulation is proposing to increase the honoraria paid to arbitrators.[2]

In support of the proposed rule change, below is a discussion of NASD Regulation's arbitration program operating costs and revenue, new initiatives for improving the arbitration program, and a general description of filing fees, hearing session deposits and forum fees charged in arbitration proceedings. In addition, the development of the proposed fee increases is described. Finally, a narrative description of the proposed rule change is provided.

Operating Costs and Revenue. NASD Regulation's Office of Dispute Resolution (''Office''), and its predecessors, have been administering arbitrations for the Association since 1969. Since 1972 NASD Members have been required to submit disputes to arbitration upon the request of a customer, another member or an associated person. Submission of claims to arbitration by public investors was largely voluntary until 1987 and, as a result, the program handled a relatively small number of cases each year. Following the United States Supreme Court's 1987 decision in *Shearson/American Express, Inc. v. McMahon,* 482 U.S. 220, 96 L.Ed.2d 185, 107 S.Ct. 2332, affirming the enforceability of customer predispute arbitration agreements, the arbitration caseload grew rapidly and the program now handles more than 6,000 cases annually.

The Office's operating costs have been funded from filing fees (charged to any party filing a claim in arbitration), forum fees (charged for each hearing session held in an arbitration and allocated by the arbitrators in the award to the parties), and, more recently, member surcharges (charged to any member named in a claim and to any member when an employee of the member is named in a claim). The difference between the revenue collected in fees and the cost of administering the program has been made up from the general member assessment revenue collected by the Association from all of its members. As the number of cases has grown, and the cost and complexity of administering arbitration proceedings have increased, NASD Regulation has sought to increase the fees in order to shift the costs of the program primarily to its member users. In 1994, for example, NASD Regulation began charging members a non-refundable fee if the member or an associated person of the member was named in an arbitration proceeding—the ''member surcharge.''

In spite of the effort to shift the costs to service users, the Office is not collecting sufficient user revenue to cover its costs. For example, as the table below illustrates, in 1996 the cost of the dispute resolution program exceeded fee

[2] This rule filing replaces SR–NASD–97–39, in which NASD Regulation originally proposed the amendments to the filing fees and hearing session deposits that are contained in this filing. As discussed below, in this filing NASD Regulation has modified some of the fee changes proposed in SR–NASD–97–39 to align the fees charged more closely with the Office of Dispute Resolution's (''Office'') average costs of administering arbitration proceedings. In addition, the budget, revenue and cost figures used throughout this filing reflect the most current information about the arbitration process.

Since SR–NASD–97–39 was filed, the NASD has completed its 1998 budget process. The Office's revised 1998 revenue and expense figures from the 1998 Budget (set forth in Table 1) reflect significant savings resulting from the NASD's ''Reinvesting for Our Future'' program. This program required NASD departments to identify areas within their operations where savings could be achieved. In addition, the Office's 1997 revenue and cost experience through the end of September 1997, and including the new member surcharges implemented on July 1, 1997, caused NASD Regulation to revise the Office's projected 1998 revenues and costs. The revised revenue and cost projections are reflected in this rule filing.

revenue by $11.3 million. For 1997, even with the implementation of substantial increases in the member surcharge and an increase in revenue due to increases in the arbitration caseload, the cost will exceed revenue by $16 million. For 1998, even if the proposed changes are approved and implemented, the cost of the program will exceed revenue by $6.1 million.

TABLE 1.—REVENUES VS. EXPENSES

[In thousands of dollars]

	1995 Actual	1996 Actual	1997 Projected (with member surcharge increase effective 7/1/97)	1998 Projected (includes member surcharge and arbitrator honorarium increase, but without fee increase)	1998 Projected (with member surcharge, arbitrator honorarium increase and fee increases)
Revenue	$9,664	$13,275	$16,000	$23,110	$29,100
Expenses	$17,826	$24,617	$31,988	$35,128	$35,158
Net	($8,162)	($11,342)	($15,988)	($12,058)	($6,058)

The revenue shortfall in the program is currently made up from general assessment revenue; however, NASD Regulation is developing further increases in the member-user fees to close the budget gap. There will not be any further increases in fees charged to public investors in the foreseeable future.

New Initiatives to Improve the Arbitration Program. In January 1996, the NASD's Arbitration Policy Task Force (''Task Force'') released its report on Securities Arbitration Reform. The Task Force's report made numerous recommendations to improve the arbitration process. Some of the recommendations, such as early appointment of arbitrators, have been implemented. Other recommendations, such as selecting arbitrators by a list selection method, involve significant technological changes and changes in the way the Office administers arbitration cases. And still others, like increasing arbitrator honoraria to attract and retain qualified arbitrators, involve permanent increases in the NASD's costs of operating the program.

Since the report was released, NASD Regulation has been engaged in a major effort to implement the numerous Task Force recommendations. The Office also has other initiatives underway to improve the arbitrator process. These include improving case processing and administration by, among other things, upgrading the computerized case tracking system and hiring additional staff. Some of the changes, such as increasing arbitrator honoraria and implementing list selection of arbitrators, will result in permanent increases in the cost to the NASD of administering the dispute resolution program, while others, such as improving case tracking, should result in savings. Implementing these changes will substantially improve the fairness and efficiency of the arbitration process. Finally, the growth rate in NASD Regulation's arbitration case load over the last ten years, and the increasing length and complexity of arbitration cases, are generating additional cost pressures on the Office in its continuing efforts to meet the needs of users of the dispute resolution services.[3]

The amendments to the fee schedules proposed in this rule change will serve to close some of the user revenue gap that currently exists in funding the Office's direct costs of providing arbitration services. However, the revenue from the proposed fee increases on public investors will not be used to fund the development of new systems or the implementation of the Task Force's recommendations. The exception to this is the early appointment of arbitrators, a Task Force recommendation that has already been implemented, and the proposed increases in arbitrator honoraria, which will be an increase in the Office's direct cost of administering arbitrations. Both of these initiatives directly benefit public investors, the first by improving the efficiency of arbitration, the second by attracting and retaining a higher caliber of willing, committed arbitrators.

General Description of Filing Fees, Hearing Session Deposits and Forum Fees. The fees and deposits for arbitration proceedings fall into three categories: (1) filing fees (including member surcharges);[4] (2) hearing session deposits; and (3) forum fees.

Filing fees are submitted by the party filing a claim. Filing fees are required for all claims, including cross-claims, counterclaims and third party claims. For example, if a public investor files a claim against two members, the investor pays a filing fee specified in Rule 10332 for public investor claimants based on the aggregate amount claimed. If one member then files a counterclaim against the public investor, the member pays the filing fee specified in Rule 10332 for industry claimants based on the aggregate amount claimed in the counterclaim. If the member then files a cross-claim against the other member firm respondent or a third party claim against another member, the member pays another filing fee as specified in Rule 10332 for industry claimants based on the aggregate amount claimed in the cross-claim and the member who is a third party respondent pays a member surcharge based on the aggregate amount claimed in the third party claim. The members each pay one member surcharge when they are brought into the case, whether through a claim, counter-claim, cross-claim or third party claim.

A hearing session deposit is required for arbitrations where hearings will be held and is intended as an advance payment for the Office's cost of conducting one hearing session. If the arbitrators determine that several

[3] The number of cases filed with NASD Regulation's Office of Dispute Resolution in the first five months of 1997 is up 16 percent over the same period in 1996. The number of cases filed annually has risen from 2,886 in 1987 to an estimated 6,247 in 1997 based on the number of cases filed in the first nine months of 1997, a 116 percent increase. NASD Regulation projects that over 6,900 cases will be filed in 1998, an increase of 139 percent over 1987.

[4] Member surcharges imposed pursuant to Rule 10333, are intended to shift some of the costs of the dispute resolution program to the members who are actually named in cases and, therefore, are the primary users of the program.

hearing sessions may be necessary, Rule 10332(a) permits them to order the parties to make additional hearing session deposits. The cost of conducting a hearing session includes arbitrator compensation and travel expenses, hearing conference rooms, and staff work and expenses. All parties are required to pay the hearing session deposits specified in Rules 10205 and 10332. Any member firm filing a cross-claim, counterclaim, or third party claim against a public investor must pay the hearing session deposits specified for industry claimants in Rule 10332. In addition, if a case is settled or withdrawn more than eight days before a hearing is held, the hearing session deposit is refunded; in the Office's experience this occurs two-thirds of the time.

Forum fees are NASD Regulation's charges that are assessed by the arbitrators to the parties for conducting hearings where evidence and testimony is presented. The fees are based on the number of hearing sessions scheduled and conducted. Thus, forum fees can be assessed even if there is no final award. Forum fees assessed by the arbitrators are paid to NASD Regulation, not to the arbitrators, and the arbitrators' compensation is not affected by the amount of forum fees assessed or collected. The arbitrators can assess forum fees for each hearing session up to the maximum hearing session deposit that the party is required to pay under Rule 10332. For example, under the proposed rule change, the hearing session deposit for a public investor with a $100,000 claim is $750. Therefore, if an arbitration took four hearing sessions (two full days), the arbitrators could assess a maximum of $3,000 in forum fees.[5] The arbitrators can assess the forum fees evenly between the parties, or apportion the fees in any other manner, including assessing all forum fees against one party. The arbitrators can also determine to assess only part of the forum fees against one party (the respondent, for example) and not assess any forum fees against another party (the claimant, for example). Any forum fee assessed against any party is reduced by the amount of hearing session deposits already paid by the party.

Development of Proposed Fee Increases

As a result of the continuing growth of the program and the current and projected operating revenue shortfalls, NASD Regulation determined that changes to the funding mechanisms were necessary. Moreover, as discussed below, the fees collected under the current schedule do not come close to covering the NASD's costs of providing the arbitration service. In order to ensure that the changes were appropriate to the goals of the program and fair to its users, NASD Regulations established guidelines for fee increases and analyzed the program to identify the cost of each service.[6] In addition, NASD Regulation identified the member users of the program.

In 1996, case volume for the entire program (public investor and intra-industry arbitration) was analyzed to obtain a profile of the users of arbitration services and to project the impact of future fee changes upon member firms.[7] This analysis revealed that only 753 firms (14 percent) out of approximately 5,500 NASD member firms had been parties to arbitration cases. Of these 753 firms, 88 firms (12 percent) accounted for over 50 percent of the case volume. Each of these 88 firms reported revenues in excess of $100 million on their FOCUS filings.[8] In contrast, firms that reported revenues of less than $500,000 accounted for only 9 percent of NASD member firms and less than 3 percent of the total projected case load. Thus, a small number of large firms are involved in more than 50 percent of all arbitration cases. NASD Regulation considers these firms to be the primary and most frequent member users of the service and, therefore, believes it is appropriate for any fee changes to shift member costs to these member users. The proposed rule changes, including the changes to the member surcharge adopted in July 1997, largely accomplish this goal. In addition, any future changes to the fee structure will transfer any additional costs to these primary users of the program.

The Office has analyzed the overall flow of revenue from users of the arbitration services for the twelve months ending August 31, 1997. After calculating filing and other fees with forum fees actually paid by public investors and refunds received by public investors, the data show that public investors currently are assessed approximately $3.5 million of $15.3 million in fee revenue collected from users. This is 23 percent of the total fee revenue. Although the time periods are not directly comparable, the revenue contribution of public investors over the twelve months ended August 31, 1997 is less than 12 percent of the $29.8 million calendar year 1997 projected total cost of running the dispute resolution program. Public investors, however, file approximately 80 percent of the new claims filed with the Office each year. Moreover, even though some of these revenue contribution figures will vary because of differences in case volume, forum fee allocations and other factors, NASD Regulation believes that the total relative revenue contributions of public investors and members will not change substantially after the proposed fee changes are approved.

Overall, NASD Regulation expects that the fee changes proposed in this rule filing and the member surcharge changes implemented earlier in 1997 will generate approximately $11.5 million in additional revenue. The combination of increases in fees (filing fees, member surcharges and hearing session deposits) charged to members will generate $8.4 million in additional revenues (73 percent of total additional revenues to be generated by the fee changes). Even with this additional revenue, the Office will continue to incur operating shortfalls of more than $6.1 million.

Guidelines for Proposed Fee Increases. In developing the proposed rule change, NASD Regulation identified several important principles to guide its decisions on the appropriate fees for the arbitration service it provides:

- The current ratio of public investor fees to member fees should not change. Currently public investors pay approximately 23 percent of the

[5] Arbitrators assess forum fees in the award. The Office keeps track of the number of hearing sessions held, the hearing session charge to be applied and any other fees paid or incurred (such as filing or postponement fees and hearing session deposits) and advises the arbitrators. The arbitrators then determine how much of the fees, if any, each party will be responsible for paying, sometimes setting forth liability for the fees in percentages and specifying individual or joint and several liability for the fees. Finally, the award will set forth the specific amounts of fees owed by each party.

[6] The NASD Regulation Board of Directors formed a Subcommittee on Arbitration Fees to examine the current revenue, cost and fee structure, and to recommend changes. The Subcommittee was composed of three public members (James E. Burton, CalPERS; Bonnie Guiton Hill, Times-Mirror Corp.; and William S. Lapp, Esq., Lapp, Laurie, Libra, Abramson & Thomson, board member of the Public Investors Arbitration Bar Association and member of NASD Regulation's National Arbitration and Mediation Committee (NAMC)) and three securities industry members (Raymond E. Wooldridge, Southwest Securities Group, Inc., NAMC member and Chairman of NAMC's Finance Subcommittee, and former Vice-Chairman of NASD Regulation's Board of Directors; Philip S. Cottone, Rutherford, Brown & Catherwood, Inc., Chairman of NAMC and former member of NASD Regulation's Board of Directors; and O. Ray Vass, Merrill, Lynch, Pierce, Fenner & Smith, Inc., member of NASD Regulation's Membership Committee).

[7] *See* Table 3, *infra*, for a summary of the analysis.

[8] FOCUS Reports (Financial and Operational Combined Uniform Single Reports) are submitted to the NASD pursuant to SEC Rule 17a–5 by member firms to report on the member's net capital and general financial position.

arbitration service fees and members pay 77 percent.

• The fees should not create a financial barrier to prevent a public investor from seeking arbitration. The maximum fee charged to public investors should not exceed the direct costs of providing the service and public investors should be permitted to ask the Office to waive the fees in circumstances of financial hardship.

• The fees for a public investor to file a case in arbitration (the filing fee plus hearing session deposit) must be less or no more than the initial fee charged to the member named in the aribration (the member surcharge).

• The revenue contribution plan should, to the extent possible, impose costs on the member firms that use the program.

• Any fee increases for public investors should be allocated to reduce the revenue shortfall for direct arbitration services alone. Additional fee increases to cover revenue shortfalls for other dispute resolution programs and indirect operating costs would be assessed to member users of the dispute resolution programs.

Activity-Based Cost Analysis. In order to understand better the costs of administering the dispute resolution program, NASD Regulation, assisted by the accounting firm of Coopers & Lybrand, conducted an activity-based costing study to identify more accurately the Office's current costs and link specific activity costs to the services provided. This study identified fifty-two separate arbitration service activities and determined the total direct cost of performing each activity.

In addition to providing the Office with a better understanding of particular activities and costs, the study also provided a program-wide perspective of the raw average costs and average fees collected in both simplified and standard arbitration cases. The study showed, on a per occurrence basis, the costs associated with activities such as: (1) receiving and processing claims; (2) analyzing and serving claims; (3) selecting arbitrators; (4) scheduling hearings; and (5) conducting hearing sessions. The analysis has permitted the Office to extrapolate its likely costs for 1998 and compare them to the revenue expected. This ''Break-Even Analysis'' is attached to this filing as Exhibit 2 and is discussed below.

The raw average costs for particular activities have been identified by breaking down the work of the Office into discrete functions, such as ''Receiving Claims.'' The cost of performing these discrete functions is then identified by totaling the staff hours and other expenses devoted to the function. The number of occurrences of the function are then identified and counted. The number of times the receiving claims function occurs matches the number of claims filed with the Office each year. The number of occurrences of the function is then divided into the total cost to derive the per occurrence cost of the function, or the raw average cost. The average cost of each function can be multiplied by the number of times it occurs in each case and added to all of the other functional costs of a case to produce the average cost of a hypothetical case.

The costs associated with particular cases, however, fall along a wide spectrum depending on the nature of the case. Cases that are settled shortly after being filed usually cost little to administer. Cases that involve numerous and complex issues, numerous pre-hearing rulings and conferences with the arbitrators, lengthy hearings and, finally, an award are more costly to administer than other cases. The Office has also found that the larger the amount in dispute, the more costly the case is to administer because there are usually more parties involved (which makes communication more costly and time consuming), there are more motions and other disputes to resolve, and prehearing conference and hearing logistics are more complicated. This wide spectrum of costs is the reason that the Office imposes graduated fees in two stages: filing fees and forum fees (the latter are partly prepaid through hearing session deposits).

Finally, NASD Regulation notes that the activity-based cost analysis is a useful analytical tool for budgeting and planning; however, it should not be relied upon to produce guaranteed cost figures. The actual costs of providing the services can and will vary due to factors that are unpredictable and beyond NASD Regulation's ability to control.

Proposed Rule Changes

In view of the foregoing, NASD Regulation is proposing to amend the schedules of fees (including hearing session deposits) for both intra-industry and public investor disputes to support the improvement of the arbitration service administered by the Office and to shift the cost of administering the service to the users.

The filing fee and hearing session deposit changes proposed in this rule filing are discussed in four separate categories: (1) filing fees for claims by public investors against members (''Public Investor-Member Disputes''); (2) filing fees for claims by members against public customers (''Member-Public Investor Disputes'') or other members or associated persons (''Intra-industry Disputes''); [9] (3) hearing session deposits in all cases between public investors and members, and in intra-industry cases; and, (4) miscellaneous changes. Also discussed are NASD Regulation's proposed changes to the arbitrator honorarium schedule. NASD Regulation believes the changes, taken together, will maintain the current ratio of funding of the arbitration service between public investors and members.[10]

Filing Fees: Public Investor-Member Disputes. NASD Regulation is proposing to amend Rule 10332 to increase the filing fee for disputes between a public investor claimant and a member respondent by an average of 50 percent in most brackets (fees are based on the amount in dispute, and a range of amounts in dispute (e.g., $50,000.01 to $100,000) to which a particular fee applies is referred to as a bracket) and add three new brackets to graduate further the fee schedule. For example, the old bracket of fees for claims of $10,000.01 to $30,000 has been divided into two brackets; one from $10,000.01 to $25,000 with a new filing fee of $125 (versus $100 for the old bracket), and another from $25,000.01 to $30,000 with a new filing fee of $150. The old bracket was divided to take into account the new ceiling for simplified arbitration cases, which was raised from $10,000 to $25,000.[11] The largest filing fee increases are for the largest cases; the filing fee for claims of more than $10,000,000 is being raised 100 percent from $300 to $600.[12]

Using the costs identified in the activity-based costing study, NASD Regulation believes that in 1998 the average direct cost associated with processing a simplified arbitration case

[9] The proposed rule change treats associated persons of members like public customers for purposes of fees. *See* discussion, *infra.*

[10] For the twelve month period ending August 31, 1997, the net revenue contribution of public investors was approximately $3.5 million. (Net revenue contribution is calculated by identifying the fees paid, including hearing session deposits and postponement fees, less the refunds and reallocations through assessment of costs, such as forum fees.) The net revenue contribution of members was $11.8 million. NASD Regulation is projecting that the combined additional revenue generated by the proposed fee increases in this rule filing and the increased member surcharge already in effect will be approximately $11.6 million. While it is not possible to predict accurately the 1998 net revenue contributions of public investors and members, NASD Regulation intends for the proposed increases to maintain the same ratio of public investor/member net revenue contributions.

[11] *See* note 1, *supra.*

[12] *See* Table 2, *infra.*

from beginning to end will be approximately $412. For a standard case the cost from filing through all activities up to the prehearing conference will range from $353 through at least $630. The activity categories used to calculate average claim processing costs were: (i) receipt/assignment of cases; (ii) check processing; (iii) analyzing claims; (iv) serving claims; (v) processing answers; (vi) processing motions; (vii) processing counterclaims; and (viii) conducting discovery (except for prehearing conferences to resolve discovery issues). Activity costs that were not included, among others, were; (i) recruiting and training of arbitrators; (ii) qualifying arbitrators; (iii) mediation; and (iv) NASD corporate oversight and transfer pricing of services from other departments.

For a simplified arbitration case the proposed customer filing fee for a $10,000 claim is $75, plus a proposed $250 simplified arbitration fee, for a total of $325, versus average costs for simplified cases of $412. Because there are no hearings in such cases, much of the Office's cost is associated with activities from processing the claim up through presenting it to the arbitrator for a decision. By contrast, in cases where hearings are conducted, the hearings constitute by far the largest portion of the cost.

NASD Regulation is proposing filing fees designed to cover as much of the actual costs of the arbitration process from filing up to the prehearing conference as is possible without erecting barriers to entry into arbitration. For a standard case in which more than $100,000 is in dispute and three arbitrators are appointed, the proposed customer filing fee is $300, while the Office's average expenses for administering the case from filing up to the pre-hearing conference will be at least $477. The margins for large bracket cases are smaller, but the proposed fees do not exceed the actual average cost to provide the service.

NASD Regulation's ''Break-even Analysis'' (attached as Exhibit 2) illustrates how the Office's costs of administering an arbitration correlate to the revenues obtained through filing fees and hearing session deposits using 1998 figures and the proposed fee increases.[13] The analysis uses the activity categories identified in the activity-based costing study. For each type of activity the Office's total cost of performing the activity (serving claims, for example) is divided by the number of times the particular activity occurs to produce an approximate average cost for each occurrence of the activity. These activities and their costs are then charted sequentially as they would likely occur in a case to produce a hypothetical cumulative cost at each major stage of a case. This average cost is charted against the fee revenue received in a case. As noted above, however, NASD Regulation does not regard the analysis as a guarantee that in each case each step in the process will cost no more than the average predicted by the analysis.

The analysis shows that well before a preheating conference is held the claim filing fee revenue has been used up and, after an award is rendered following a hearing, all of the fee filing revenue and forum fees that could be collected in a case have been expended. The analysis takes into account that some activities (processing motions, for example) will occur several times in a case. In addition, the costs of some activities (notably, holding hearings) vary greatly so that, although it is possible to establish an average cost for the activity, the cost of the activity in a particular case could be substantially higher or lower than the average. Finally, in the Office's experience, the cost of some activities tends to vary by the amount in dispute, with larger cases tending to cost more to administer at certain stages than smaller cases. The Office believes that the cost variance may result from the increased contentiousness of the litigants when there are significant damages in dispute and there are sometimes larger numbers of parties involved in cases where large amounts are in dispute.

While the proposed increases in filing fees and hearing session deposits are expected to generate $3.1 million in additional revenue from public investors, the increase will be spread over more than 5,000 cases and should not discourage claimants from seeking relief. For example, in cases where more than $50,000 is in dispute (approximately 16 percent of the public investor cases filed with the Office), the filing fee is increasing $75 from $150 to $225. The increase of $75 represents less than 2/10 of 1 percent of the amount in dispute.[14] The filing fee increases in other brackets are similarly small relative to the amount in dispute:

[13] Exhibit 2 to the proposed rule filing presents examples of how the proposed filing fees and forum fees would apply in particular types of cases and the Office's average costs of administering arbitration proceedings in such cases. The figures in the line ''Net of revenues—cost'' show the loss the Office will incur in the example when the Office's costs are subtracted from the revenues collected. Similarly, the final figure in each example shows how much the Office would lose in such cases after the Office's total costs are subtracted from the revenues collected, including forum fees. In addition, for comparison purposes, Exhibit 2 includes the current forum fees that would be charged for the type of case in each example. Because the cost figures set forth in Exhibit 2 are averages, parties should not regard them as predictive of the actual cost of administering their case.

[14] By contrast, the filing fees of the American Arbitration Association (''AAA'') range from $300 to $4,000, depending on the amount in dispute. In addition, the AAA's rules require the parties to pay arbitrator honorariums and other costs of an arbitration proceeding.

TABLE 2.—PERCENTAGE INCREASE IN CUSTOMER FILING FEES

	Old filing fee	Proposed new filing fee	Dollar amount of increase	Percent increase	Increase as percent of amount in dispute
$.01–1,000.00	$15	$25	$10	66.67	1.000
$1,000.01–2,500	25	25	0	0.00	0.000
$2,500.01–5,000	50	50	0.000	0	0.000
$5,000.01–10,000	75	75	0	0.00	0.000
$10,000.01–25,000	100	125	25	25.00	0.250
$25,000.01–30,000	100	150	50	50.00	0.200
$30,000.01–50,000	120	175	55	45.83	0.183
$50,000.01–100,000	150	225	75	50.00	0.150
$100,000.01–500,000	200	300	100	50.00	0.100
$1,000,000.01–3,000,000	250	500	250	100.00	0.025
$500,000.01–3,000,000	250	375	125	50.00	0.025
$3,000.01–5,000,000	250	600	350	140.00	0.012
$5,000.01–10,000,000	300	600	300	100.00	0.005
Over $10,000.000	300	600	300	100.00	0.005

Filing Fees: Member-Public Investor Disputes and Intra-Industry Disputes. NASD Regulation also is proposing to amend Rule 10332 to increase the filing fees where a member files a claim against a public investor. The current filing fee is $500 for all brackets. NASD Regulation is proposing to substitute a graduated filing fee beginning at $200 for claims of $1,000 or less up to $5,000 for claims over $10,000,000. By graduating the fee schedule, the filing fees are assessed proportionately on the members based on the size of the claim. Thus, while the filing fees for large claims would increase substantially, the filing fees for small claims would actually decrease. The fairness of the fee schedule to members with small claims is enhanced by decreasing fees for claims of $5,000 or less.

NASD Regulation also is proposing to amend Rule 10205 to increase and graduate the filing fees for intra-industry disputes. Currently, the filing fees are $500 regardless of the amount in dispute. NASD Regulation is proposing to graduate the filing fee from $200 for claims of $1,000 or less up to $5,000 for claims exceeding $10,000,000 in order to make the filing fee fairer to claimants with small claims.

As noted above, in addition to the filing fee and hearing session deposit increases proposed in this rule filing, NASD Regulation has increased substantially the surcharge on members named as respondents in an arbitration proceeding.[15] Taken together, the surcharges and proposed fee increases on members in both public-investor and intra-industry cases are expected to generate $8.4 million in additional revenue, or 73 percent of the total revenue generated. The specific impact on members is shown below:

Table 3.—Impact of Fee Increases (Including Surcharges) on Member Firms

Capitalization of firm	Number of firms	Number of cases (est. 1998)	Percent of total	Estimated impact (1998)	Impact per firm
$1 Billion +	19	2495	36.18	$3,000,000	$157,895
$100 Million–$1 Billion	69	1062	15.40	1,300,000	18,841
$50 Million–$100 Million	48	531	7.70	650,000	13,542
$25 Million–$50 Million	83	751	10.90	900,000	10,843
$10 Million–$25 Million	117	766	11.11	950,000	8,120
$1 Million–$5 Million	303	1069	15.50	1,300,000	4,290
$500,000–$1 Million	49	111	1.61	150,000	3,061
Less Than $500,000	65	111	1.61	150,000	2,308
Total	753	6896	100.00	8,400,000	11,155

The average increase in cost to member firms for each case will be $1,218.

NASD Regulation is proposing increases in member-user contributions to the dispute resolution process because member firms have indicated that arbitration is their preferred forum for resolving public investor-member disputes through the predispute arbitration agreements that are typical of broker-customer business relationships. Accordingly, the proposed fee increases assess the costs on the actual users of the program.

Hearing Session Deposits. NASD Regulation also is proposing to amend Rules 10205 and 10332 to increase the hearing session deposits[16] for all cases by no more than 50 percent in most brackets (in the lowest brackets increases from $15 to $25, and $25 to $50, represent 67 and 100 percent

[15] Rule filing SR–NASD–97–40, filed for immediate effectiveness on June 12, 1997, and effective July 1, 1997, steeply graduated and increased the surcharge on members from a maximum of $500 under the old schedule to $3,600 under the new schedule.

[16] Hearing session deposits are required before NASD Regulation will schedule a hearing unless waived by the Director due to financial hardship. The amount deposited is offset against the actual hearing costs incurred. If a case is settled, dismissed, or withdrawn more than eight business days before a hearing was scheduled to occur, the hearing session deposit is refunded.

increases, respectively) and to add three new brackets to graduate further the hearing session deposit schedule. For example, the old bracket of fees for claims of $10,000.01 to $30,000 has been divided into two brackets, one from $10,000.01 to $25,000 with a new hearing session deposit of $450 [17] (compared to $300 for the old bracket) for a single arbitrator, and another from $25,000.01 to $30,000 with a new hearing session deposit of $450. In the $25,000.01 to $30,000 bracket the hearing session deposit for three arbitrators will be $600 (compared to $300 for the old bracket). The hearing session deposit for claims of $5,000,000.01 or more is being reduced to $1,200.

The proposed new hearing session deposits are based on the results of the activity-based costing study which showed that, for cases requiring hearings, NASD Regulation's projected average cost to provide hearings in 1998 will be approximately $1,200 per hearing session. The activities used in computing this cost include arbitrator expenses and compensation, hearing room expenses, taping expenses, and staff work and expenses. The Office's experience also shows, however, that the costs of conducting hearings varies significantly with the amount in dispute and the number of parties involved. This is because staff attorneys may need to attend some or all of the hearing sessions, staff coordination of logistics may be more difficult and complicated, and staff communication with the parties may be more involved and time-consuming. Moreover, the hearing session deposits have been graduated from a relatively low level for cases in lower brackets up to the actual average cost of conducting hearings because NASD Regulation believes that charging claimants the full cost of conducting hearings in relatively small cases could discourage some public investors from seeking relief.

In addition, the proposed rule change makes the hearing session deposits for particular brackets the same among all types of cases; public investor vs. member, member vs. public investor and intra-industry. This is being done because NASD Regulation believes the hearing session deposit, and by extension the forum fees, should not exceed the Office's actual costs, and such costs are, on average, approximately the same for all types of cases, even if they may vary by the amount in dispute or the number of parties involved. As a result of this change, the hearing session deposit will be the same without regard to whether a public investor or a member filed the initial claim.

Miscellaneous Changes. NASD Regulation is proposing to amend Rule 10205(a) to provide that if the claimant is an associated person, he or she will pay the filing fee and hearing session deposit specified for public customers. However, if the associated person is a joint claimant with a member, the member will pay the filing fee and hearing session deposit specified for industry claimants. NASD regulation is also proposing to amend Rules 10205(e) and 10332(e) to increase the hearing session deposit from $600 to $1000, or an amount specified by the Director or the arbitrators not exceeding the maximum hearing session deposit specified in the rules, for claims where the amount in dispute is not disclosed by the claimant in the Statement of Claim.[18]

Finally, Rules 10205(i) and 10332(h) are proposed to be amended to provide that the filing fees and hearing session deposits for large and complex cases brought under Rule 10334 [19] will be those specified for cases exceeding $10,000,000. There are a few significant and distinct costs associated with such cases, including the Administrative Conference, the number of hearing sessions, pre-hearing issues to be resolved and customized arbitration procedures that may be requested by the parties.

Arbitrator Honoraria. NASD Regulation is proposing to amend IM–10104 to increase the honoraria paid to arbitrators. The honorarium will be increased from $150 to $200 for each hearing session, with an additional $75 per day for the chairman of the panel. Thus, the Office's honorarium cost for a panel of three arbitrators for one hearing session is $675. The honorarium for a prehearing conference will be $200. The honorarium for a case not requiring a hearing will be $125.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act [20] in that the proposed rule change provides for the equitable allocation of reasonable charges among members and other persons using the Association's arbitration facility because it further graduates the fee schedules and requires users, especially member firm users, to absorb a reasonable share of the costs of operating the arbitration program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at

[17] Under the new ceilings for single arbitrator claims without a hearing, claims up to $25,000 may be resolved by a single arbitrator on the pleadings alone. In such cases, a hearing session deposit is not required. Thus, the new $450 hearing session deposit for such cases only applies in the event the claimant requests a hearing.

[18] In cases where the claimant is seeking a remedy other than damages (recision, for example) and does not specify damages, the staff will attempt to establish the market value of the securities which are the subject matter of the claim before resorting to the default fee specified in paragraph (e) of the two rules.

[19] Rule 10334 (the rule for large and complex cases) has been extended for five years and the use of the procedures is now entirely voluntary. *See* Securities Exchange Act Release No. 39024 (September 5, 1997), 62 FR 47856 (September 11, 1997).

[20] 15 U.S.C. 78*o*–3.

the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–79 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 97–31392 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39349; File No. SR–NASD–97–96]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Amend Its Rule 3230 Relating to Clearing Agreements

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 14, 1997, the NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On November 20, 1997, the NASD Regulation filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from John M. Ramsay, Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated November 19, 1997 (''Amendment No. 1''). In Amendment No. 1, the NASD Regulation amended the proposal to: (1) Add a sentence to the rule relating to the responsibility of introducing members to notify clearing members of the specific reports needed by the introducing members to supervise its business; (2) clarify that failure to provide such notification would violate not only the proposed rule but also, the Association's supervisory rules; and (3) delete a series of questions directed to readers of the proposal. Commission staff has incorporated the changes set forth in Amendment No. 1 into the notice.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend the National Association of Securities Dealers, Inc.'s (''NASD'' or ''Association'') Rule 3230 to: (1) establish standards for the disposition of written customer complaints received by clearing firms about introducing member firms relating to their functions and responsibilities under the clearing agreement; (2) govern how exception reports are made available to introducing firms and retained by clearing firms; and (3) permit introducing firms to write checks on their clearing firm's account. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

3230. Clearing Agreements

(a) All clearing or carrying agreements entered into by a member, except where any party to the agreement is also subject to a comparable rule of a national securities exchange, shall specify the respective functions and responsibilities of each party to the agreement and shall, at a minimum, specify the responsibility of each party with respect to each of the following matters:

(1) Opening, approving and monitoring customer accounts;

(2) Extension of credit;

(3) Maintenance of books and records;

(4) Receipt and delivery of funds and securities;

(5) Safeguarding of funds and securities;

(6) Confirmations and statements;

(7) Acceptance of orders and execution of transactions;

(8) Whether, for purposes of the Commissioner's financial responsibility rules adopted under the Act, and the Securities Investor Protection Act, as amended, and regulations adopted thereunder, customers are customers of the clearing number; and

(9) the requirement to provide customer notification under paragraph [(d)]*(g)* of this Rule.

(b)(1) In order for the introducing member to carry out its functions and responsibilities under the agreement, each clearing member must forward promptly any written customer complaint received by the clearing member regarding the introducing member or its associated persons relating to functions and responsibilities allocated to the introducing member under the agreement directly to: (A) the introducing member; and (B) the introducing member's examining authority designated under Section 17 of the Act (''DEA'') (or, if none, to its appropriate regulatory agency or authority). The clearing or carrying agreement must specifically direct and authorize the clearing member to do so.

(2) The clearing member must also notify the customer, in writing, that it has received the complaint, and that the complaint has been forwarded to the introducing member and to the introducing member's DEA (or, if none, to its appropriate regulatory agency or authority). This written notice to the customer must also contain a statement that reads substantially as follows: ''Please be aware that you retain the right, at your discretion, to transfer your account to another broker/dealer of your choice.''

(c)(1) A clearing member, when it enters into a clearing agreement, must immediately, and annually thereafter, provide the introducing member a list or description of all reports (exception and other types of reports) which it offers to the introducing member to assist the introducing member in supervising its activities, monitoring its customer accounts, and carrying out its functions and responsibilities under the clearing agreement. The introducing member must notify promptly the clearing member, in writing, of those specific reports by the clearing member that the introducing member requires to supervise and monitor its customer accounts.

(2) The clearing member must retain as part of its books and records required to be maintained under the Act and the Association's rules, copies of the reports requested by or provided to the introducing member. For purposes of this Rule, the clearing member will be in compliance with the requirements of this paragraph it if retains the data from which the original report was produced, provided, the clearing member can, at the request of the DEA, either (A) recreate the report; or (B) provide the data and the data formatting that was used to prepare the report.

(3) Each year, no later than July 31, the clearing member must notify in writing the introducing member's chief executive and compliance officers of the reports offered to the introducing member and the reports requested by or supplied to the introducing member during the previous year ending June 30. The clearing member must also provide a copy of the notice to the introducing member's DEA.

(4) The clearing member must provide, at the request of the introducing member's DEA, any reports (or, if the reports are not available, information or data from which the

reports could have been prepared) that were offered to the introducing member but which the introducing member did not request.

(d) The clearing or carrying agreement may permit the introducing member to issue negotiable instruments directly to the introducing member's customers using instruments for which the clearing member is the maker or drawer. The clearing member may not grant the introducing member the authority to issue negotiable instruments until the introducing member has notified the clearing member in writing that it has established, and will maintain and enforce, supervisory procedures with respect to the issuance of such instruments.

[(b)]*(e)* Whenever a clearing member designated to the Association for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends any of its clearing or carrying agreements with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) or enters into a new clearing or carrying agreement with an introducing member, the clearing member shall submit the agreement to the Association for review and approval.

[(c)]*(f)* Whenever an introducing member designated to the Association for oversight pursuant to Section 17 of the Act, or a rule of the Commission adopted thereunder, amends its clearing or carrying agreement with a clearing member designated to another self-regulatory organization for oversight with respect to any item enumerated in subparagraphs (a)(1) through (a)(9) enters into a new clearing agreement with another clearing member, the introducing member shall submit the agreement to its local Association district office for review.

[(d)]*(g)* Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recent concerns about questionable sales practices and potentially fraudulent activity by certain introducing firms, and the handling of customer complaints about those firms by their clearing firms, caused the staffs of NASD Regulation and the New York Stock Exchange, Inc. (''NYSE'') to examine the relationship between clearing firms and their client introducing firms. The examination resulted in proposals to amend the NASD's and NYSE's Rules relating to the content and approval of clearing agreements to specify requirements for handling customer complaints, for providing, requesting and retaining exception reports, and for issuing checks. The NYSE's proposal to amend their Rule 382 has been filed with the Commission.[4] The NASD believes its proposal to amend Rule 3230 discussed below is consistent with the current NYSE proposal to amend NYSE Rule 382.

While the Board of Directors of NASD Regulation (''Board'') approved the proposed rule in recognition of the importance of maintaining consistency with the NYSE's proposal, the Board expressed strong concerns regarding the proposal, including those relating to two particular issues. First, the Board expressed concern that the proposed rules not change or be interpreted as changing the fundamental nature of the relationship between introducing and clearing firms, or otherwise affect rights, responsibilities or liabilities of the introducing or clearing firm under law or contract. Other than to establish limited requirements to enable the introducing member to carry out its responsibilities under its clearing or carrying agreement with the clearing member, the proposals are not intended to change the fundamental nature of the relationship between introducing and clearing firms, or otherwise affect any existing rights, responsibilities or liabilities under law or contract.

Second, the Board expressed concern that the requirement that the customer be notified by the clearing firm that he or she has the right to transfer his or her account to another firm may unfairly single out a particular category of complaints, create an unfair implication that each such complaint would warrant the customer's transferring his account, or otherwise operate inappropriately to distinguish this class of complaints from others. In recognition of the importance of maintaining consistency with the NYSE's proposal, the NASD requests that the SEC defer approval of the NYSE's proposal until the NASD and the SEC have had an opportunity to consider comments in response to the publication for comment of the NASD proposal in the **Federal Register**.

Description of Proposed Rule Change

Customer Complaints. It is generally the practice of clearing firms to forward to introducing firms customer complaints they receive relating to matters that are the responsibility of the introducing firm. Under NASD Rule 3070, a member is required to report to the Association any written customer complaint against it involving allegations of theft or misappropriation of funds or securities or of forgery. Recently, however, there have been instances where introducing firms may not have complied in a timely manner with the requirements of Rule 3070 when their clearing firms forwarded customer complaints to them. Thus, the Association does not get the reports in a timely manner and NASD Regulation staff is not aware of the customer complaints until long after the fact. Since there is no mechanism other than Rule 3070 designed to provide this information to NASD Regulation, such late reporting undermines the purpose of Rule 3070, which is to provide NASD Regulation with early warning indicators to generate a regulatory response to problems. In addition, receipt by clearing firms of large numbers of complaints regarding introducing firms may be indicative of sales practice problems requiring prompt regulatory attention.

To address this concern, proposed new paragraph (b) states that when a clearing firm receives a customer complaint about an introducing firm relating to the functions and responsibilities of the introducing firm, the clearing firm must forward the complaint to the introducing firm and send a copy of the complaint to the introducing firm's DEA. The requirement may provide an early warning to the DEA of potential problems at introducing firms. The proposed amendment also provides that the clearing agreement must expressly direct and authorize the clearing firm to forward the complaint to the introducing firm and send a copy of the complaint to the introducing firm's DEA.

[4] See Securities Exchange Act Release No. 39200 (October 3, 1997) 62 FR 53369 (October 10, 1997) (noticing File No. SR–NYSE–97–25).

In addition, the proposed rule provides that the clearing firm must notify the customer in writing that the complaint was received, and was forwarded to the introducing firm and to the introducing firm's DEA. This requirement will serve to alert the customer that the complaint has been received and forwarded to the appropriate entity (the introducing firm) for a response, and that the introducing firm's regulator has also been made aware of the customer's complaint. This written notice to the customer must also contain a statement that reads substantially as follows: ''Please be aware that you retain the right, at your discretion, to transfer your account to another broker/dealer of your choice.''

The requirement that the complaints be forwarded to the appropriate DEA is intended to provide notice to the DEAs of the types of complaints that are being received and to provide information that may be useful for examining or investigating particular conduct. It is not intended, however, to result in an investigation of each, or any proportion, of complaints that are received by the DEA.

Exception Reports. All NASD member firms are required under NASD and federal regulations to establish, maintain and enforce supervisory systems and procedures that are designed to address all areas of a member's business. A key aspect of these supervisory procedures is exception and other compliance reports that a member creates to help meet these supervisory responsibilities. In a fully disclosed clearing arrangement, the clearing member generally provides exception reports that are available to assist the introducing member in carrying out its supervisory obligations. In addition, officers and managers of introducing members should be on notice of the reports and information that were available to them in meeting their supervisory and monitoring obligations. Paragraph (c) of the proposed amendment addresses these issues.

Proposed new paragraph (c)(1) requires the clearing firm to provide its introducing firm, both at the commencement of the introducing/clearing arrangement and annually thereafter, a list or description of all exception or other reports which it offers to introducing firms to assist the introducing firm in supervising its activities, monitoring its accounts and carrying out its functions and responsibilities under the clearing agreement. Proposed new paragraph (c)(1) also requires the introducing member to notify promptly the clearing member, in writing, of those specific reports offered by the clearing member that the introducing member requires to supervise and monitor its customer accounts. Failure to provide notification would not only be a violation of this rule, but also of Rule 3010, which requires that members establish and maintain proper supervisory systems.

Even though the language of the proposed amendment requires the clearing firm to provide the introducing firm with a list or description of reports that it will provide, the staff recognizes that some clearing firms do not create such reports, but rather provide data and data formatting software to their introducing clients that allow the introducing firms to prepare their own reports. The proposal would permit compliance with the provision where clearing firms communicate with their introducing firms about the data and data formatting which they make available so that the introducing firms can determine which reports they will create in order to meet their supervisory and monitoring needs.

Paragraph (c)(2) requires the clearing firm to retain as part of its books and records, copies of any reports requested or provided to the introducing firm. The provision permits a clearing firm to meet the requirement if it retains the data that was used to prepare the report but only if the clearing member, at the request of the DEA, can recreate the report or provide the data and data formatting that was used to prepare the report. Similarly, if the clearing firm provided data and report formatting to the introducing firm, the clearing firm could provide the data and data formatting that was provided to the introducing firm to the DEA to fulfill this requirement.

Paragraph (c)(3) requires the clearing member, immediately after entering into the clearing agreement, to notify the introducing member's chief executive and compliance officers of the reports that it offers to the introducing member, and the reports requested by or supplied to the introducing firm. The clearing member must provide this notice each year thereafter as of June 30, to be provided no later than the following July 31.

Finally, paragraph (c)(4) requires the clearing member, at the request of the introducing member's DEA, to provide to the DEA reports that were offered to the introducing member but which the introducing member did not request. As with the record retention provision in paragraph (c)(2), this requirement may be met if the clearing member retains the data from which the original report was produced and then either recreates the report or provides the data and data formatting that was used to prepare the report.

Check Writing. Under proposed new Paragraph (d), the clearing agreement may permit the introducing firm to issue checks to the introducing firm's customers that are drawn on the clearing member's account upon written representation from the introducing firm that it has established, and will maintain and enforce, supervisory procedures with respect to the issuance of negotiable instruments. This rule is intended to protect customers by clearly establishing that the clearing member will be the maker or drawer of such instruments and, therefore, liable for any mistakes or fraud by the introducing firm in the making or drawing of the check. This provision is intended to establish that clearing firms are liable to the introducing firm's customer if the introducing firm misuses the authority and, thereby, to protect the customer with the clearing member's funds.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which require that the Association adopt and amend its rules to promote just and equitable principles of fair trade, and generally provide for the protection of investors and the public interest in that the proposed rule change is designed to establish standards for the disposition of written customer complaints about introducing member firms, govern how exception reports are made available to introducing firms and retained by clearing firms, and permit introducing firms to write checks on their clearing firm's account.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or

[5] 15 U.S.C. 78o–3(b)(6).

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. In addition to any other issues that the public may wish to address, the Commission specifically requests comments on the following questions:

General

Will the respective obligations imposed on clearing and introducing firms by the proposal help introducing firms and regulators better address sales practice problems?

To what extent would the proposal discourage either introducing or clearing firms from agreeing to enter into new clearing relationships, or to renew existing ones, or affect the degree of care employed when entering into such a relationship?

Customer Complaints

How quickly are customer complaints that are directed to clearing firms and that concern introducing firms or their associated persons currently forwarded to introducing firms? What proportion of these complaints concerns matters identified in NASD Rule 3070(a)(2), *i.e.*, allegations of theft or misappropriation of funds or securities, or of forgery? What other types of complaints typically are received?

Why in general are complaint letters addressed to clearing firms rather than introducing firms, when they concern conduct of the introducing firms? Please address the extent to which this occurs because of confusion by customers over the relative responsibilities of the firms based on the contacts with the customer, such as confirmations, or for other reasons, *e.g.*, the failure to receive a response from the introducing firm?

Should the requirements of the proposed rule regarding customer complaints apply equally to complaints against a clearing firm sent by a customer to an introducing firm with whom the clearing firm has a clearing agreement?

Presently, copies of customer complaints that are received by securities firms are not required to be forwarded to the SEC or any self-regulatory organization (''SRO''). Rather, the firms are required to submit summaries of complaints to their SRO. To the extent that this requirement is imposed, should clearing firms be required to send summaries or actual complaint letters to the SROs?

Will the requirement that, upon the clearing firm's receipt of a customer complaint, the customer be notified by the clearing firm that he or she has the right to transfer his or her account to another firm serve a useful purpose, in informing customers that they are not tied to the introducing broker in the case of sales problems? Does it create an unfair implication that each such complaint would warrant the customer's transferring his account, or otherwise unfairly tarnish the introducing firm? To the extent that this type of information is useful to investors, does it make sense to provide this notice only in the circumstances identified?

Exception Reports

What compliance or cost burdens would result from the requirement that clearing firms retain copies of exception reports or data that is provided to introducing firms? To what extent is this data now stored, and for how long?

What are the relative costs and benefits of the requirements for annual reports to the executive and compliance officers of introducing firms as to the exception reports that were offered and supplied? Is it feasible for the clearing firm to provide reports to the DEAs that the introducing firm did not request?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NASD–97–76 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31393 Filed 11–28–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39344; File No. SR–NYSE–96–34]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change To Adopt a New Specialist Performance Measure

November 21, 1997.

I. Introduction

On December 3, 1996, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new specialist performance measure.[3]

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38150 (January 10, 1997), 62 FR 2704 (January 17, 1997). No comments were received on the proposal. The Exchange filed Amendment No. 1 to the proposed rule change on October 23, 1997.[4]

II. Description

The Exchange proposes to add on a one-year pilot basis, solely for use by the Allocation Committee in evaluating specialist performance, the concept of

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that it previously approved the portion of the proposed rule filing making permanent the Near Neighbor, Capital Utilization and Rule 103A pilot programs for measuring specialist performance. See Securities Exchange Act Release No. 38150 (January 10, 1997), 62 FR 2704 (January 17, 1997). This order approves the remaining portion of the proposed rule change to adopt a new specialist performance measure, ''adjusted stabilization.''

[4] Amendment No. 1 states that the new performance measure, adjusted stabilization, will be solely for use by the Allocation Committee, and that the information will be provided to the Allocation Committee on a one-year pilot basis. See letter from James E. Buck, Senior Vice President, NYSE, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated October 22, 1997.

''adjusted stabilization'' rates. Specialists are expected to stabilize stock price movements by buying and selling from their own accounts against the prevailing trend of the market. The current definition of stabilization is dealer purchases on minus and zero minus ticks, and sales on plus and zero plus ticks. The Exchange believes that certain trades outside of the definition of stabilization are not necessarily destabilizing. These would consist of proprietary zero plus tick purchases on the current bid (provided the current bid is below the offer at the time of the immediately preceding trade) and proprietary zero minus tick sales on the current offer (provided the current offer is above the bid at the time of the immediately preceding trade). Hence, the Exchange is grouping these trades with the trades within the current definition of stabilization to form an ''adjusted stabilization'' category for review by the Allocation Committee. Adjusted stabilization rate information would be provided, on a one-year pilot basis, solely to the Allocation Committee to assist it in assessing the value added by specialists to the depth and liquidity of stocks they currently trade.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] Specifically, the Commission believes the proposal is consistent with the Section 6(b) (5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.[6]

The Commission believes that the proposed rule change is reasonable under the Act in that continuing to further develop objective measures of specialist performance, by adopting the ''adjusted stabilization'' measure, should help perfect the mechanism of a free and open market and protect investors and the public interest. The Commission believes that ''adjusted stabilization'' is a useful concept because it could reflect liquidity added to the market by specialists that is not otherwise captured by the current definition of stabilization, by reflecting the fact that on certain zero plus tick purchases or zero minus tick sales the specialist is not initiating either a transaction or a price change, but is adding depth to the market at prices at which transactions have already occurred.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 1 will ensure that the new measure of specialist performance is used solely by the Allocation Committee to help evaluate specialist performance and the depth and liquidity specialists add to the stocks they trade. Also, by providing for the new measure on a one-year pilot basis, the Exchange will be able to monitor the success of the new performance measure in helping to evaluate specialist performance. In addition, the substance of the proposed rule change was noticed for the full statutory period and no comments were received. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions on 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–96–34 and should be submitted by December 22, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the portion of the proposed rule change (SR–NYSE–96–34) involving the adoption of ''adjusted stabilization'' rate information as a specialist performance measure,[8] as amended, is approved on a one-year pilot basis through November 21, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31389 Filed 11–28–97; 8:45 am]

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[5] 15 U.S.C. 78f(b).

[6] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s (b) (2).

[8] The Commission notes that this order only approves a portion of the proposed rule change. *See supra* note 3.

[9] 17 CFR 200.30–3(a) (12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39345; File No. SR–Phlx–97–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a Contingency Market Maker System for Foreign Currency Options

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1997,[1] the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to adopt a contingency plan to trade foreign currency options (''FCOs'') pursuant to a Market Maker System. The contingency Market Maker System would provide a modified trading system to ensure the continuity of FCO trading in the situation where a specialist unit is not available. In summary, the contingency Market Maker System would be contained in a new provision, Rule 1014(j), which states that assigned ROTs will be responsible for making markets and honoring the minimum guarantee (ten-

[1] The Exchange filed Amendment No. 1 to the proposed rule filing on November 4, 1997, the substance of which is incorporated into this notice. See letter from Philip H. Becker, Senior Vice President, General Counsel and Chief Regulatory Officer, Phlx, to Michael Walinskas, Senior Special Counsel, Market Regulation, Commission, dated November 4, 1997.

up) rule. Markets will be continuously disseminated and the responsibility to provide customers with minimum size guarantee markets pursuant to Rule 1033(a) shall apply. Assigned ROT participant organizations would be required to be available from the opening of trading on 50% of the trading days. An Exchange employee, assigned to be the Quote Monitor, would handle certain specialist-type functions. In addition, the proposed rule change amends Rule 1047, Commentary .01, to state that, in accordance with the FCO market maker system, the Quote Monitor is responsible for conducting trading rotations in the FCOs utilizing the market maker system. Further, the proposed rule change amends Rules 1017 and 1019 to clarify that orders would not be entrusted to a specialist respecting the FCO market maker system. Finally, the proposed rule change incorporates a disclaimer of liability into the proposal as proposed paragraph (j)(ii) of Rule 1014.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV blow. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has traded FCOs pursuant to a specialist system since 1982. Earlier this year, due to the resignation of a specialist unit in that FCO, the Exchange determined to delist options on the European Currency Unit (''EUC''), only offering such options pursuant to its customized facility under Rule 1069.[2] This situation prompted a review of the specialist system on the FCO trading floor and recognition that ensuring the continuity of FCO trading where a specialist cannot be promptly replaced may require a different system.

Thus, the purpose of this proposal is to adopt rules and procedures to govern situations where a specialist resigns from that function and no replacement specialist unit is immediately available for a particular FCO. As such, the proposal is a contingency plan, not intended as a permanent method of trading FCOs. As a contingency plan, it would be implemented until a specialist unit becomes available or the Exchange determined to take other action, such as request permanent approval of the market maker system or delist that FCO. Because the Phlx Board of Governors has already approved this proposal, the contingency plan would be implemented upon approval by the FCO Committee once the contingency occurs, or, depending upon the immediacy and circumstances, the chairperson of that Committee or their designee. In crafting this FCO contingency plan, the Exchange considered various methods of trading options, including the lead and primary market maker systems of other exchanges. The Exchange determined that such systems were intended for new products that required incentives for long-term commitment of time, personnel and capital, and are thus not appropriate for FCOs. Instead, the Exchange has determined to implement a pure market maker system. Thus, according to the Exchange, issues of trade allocation, book allocation or additional capital are not raised by the proposal, because existing ROTs would be acting as market makers under the proposal.

Currently, all ROTs on the foreign currency options floor are considered to be assigned in all FCOs. As such, no minimum number of ROTs is required for the proposed market maker system. Once the market maker system is implemented in a given situation, all assigned ROTs would be required to participate. To further assure adequate market maker participation, the proposal requires that assigned ROTs' participant organizations will be subject to an additional requirement of availability from the opening of trading on 50% of trading days. The Exchange intends to establish procedures requiring at least one ROT from each participant organization to be present throughout the trading day for 50% of the trading days during a specified period, thereby ensuring a minimum level of ROT presence on every trading day. Surveillance of this requirement would consist of a sign-in procedure in the trading crowd, with the Quote Monitor maintaining a log for Surveillance Department review. Failure to comply with this requirement would be considered a violation of proposed Rule 1014(j). In addition, floor brokers will be required to ensure the presence of an ROT in the trading crowd, pursuant to Rule 1063. Further, ROTs can be called into the crowd pursuant to Rule 1014 (b) and (c), and failure to honor such a request may result in disciplinary action.

ROTs will have market making responsibilities to replace certain specialist functions, such as updating markets and the components to pricing models. As ten-up markets would remain in effect, if the best bid/offer is established by someone other than an ROT and is not for at least ten contracts, participation for the additional contracts needed to meet the minimum ten contract requirement would be supplied at that same price by the assigned ROT(s). Thus, the essence of the proposed Market Maker System is ROT responsibility.

Certain specialist-type functions would be handled by the Quote Monitor, who would be an Exchange employee. Other options exchanges utilize exchange employees for similar functions.[3] The Exchange believes that the use of a Quote Monitor is appropriate and should facilitate disseminating firm markets in affected FCOs. The Quote Monitor would be responsible for establishing, monitoring, and updating FCO markets under the market maker system. The Quote Monitor would maintain the Auto-Quote System with input from the assigned ROTs, which shall automatically update these FCO markets, based on the spot value of the underlying foreign currency and the pricing model selected by the assigned ROTs in that FCO, pursuant to a procedure established by the Exchange. The Quote Monitor would be responsible for regularly requesting market quotations, as well as updated components to the relevant pricing model, such as interest rates and volatility levels, from assigned ROTs. Assigned ROTs would be required to voice markets in these FCOs in a loud and audible manner and update those markets, as well as other components relevant to the pricing model. The Quote Monitor would staff this position during all trading hours. The number of Quote Monitors will vary depending on the number of FCOs trading pursuant to the proposed Market Maker System. The Quote Monitor would also post bids and offers as instructed loudly and audibly by Floor Brokers. The Floor Broker would be responsible for the posted bid/

[2] See Securities Exchange Act Release No. 38764 (June 24, 1997), 62 FR 35535 (July 1, 1997) (SR–Phlx–97–26). The proposal at hand is not intended to replace SR–Phlx–97–26, such that FCOs on the ECU would continue to be available only on a customized basis, pursuant to Rule 1069.

[3] See *e.g.*, CBOE Rule 7.1.

offer until he or she had properly informed the Quote Monitor that it is withdrawn. The Floor Broker responsibilities applicable to markets maintained by the Quote Monitor are included in Rule 1063(e).

The implementation of the proposed market maker system would result in elimination of the specialist or limit order book, as the Quote Monitor's responsibilities would be directed at monitoring markets but not holding orders. Currently, FCO specialists maintain a specialist limit order book. Generally, smaller customer orders are placed on the book, but the book is not limited to customer orders. Depending upon the option and the market conditions, an FCO book's content varies. Orders on the book at the time of the implementation of the market maker system would be canceled, and could be re-entered for representation by floor brokers. The Exchange would announce the required cancellation of such orders by memorandum to FCO participants.[4]

The Exchange has been informed of a decreased use in the book. The Exchange believes this decreased use is a result of decreased FCO volume, increased costs and the more institutional nature of FCO trading. All of these factors were taken into account when determining to eliminate the book. The Exchange acknowledges that eliminating the book is a departure from the procedures of other exchanges employing a market maker system, who generally utilize an exchange employee to operate the book. Although the Exchange considered this approach, it was determined that venturing into the business of operating a limit order book was not appropriate for the Exchange to do on a sudden, contingency basis in light of both the liability as well as operational and staffing burdens. The Exchange also cites to the institutional nature FCO trading, including larger sizes, which diminishes reliance on the limit order book. Certain FLEX products currently trading on other exchanges do not offer a limit order book, in view of the institutional nature of FLEX options. In fact, FCO customized options, pursuant to Phlx Rule 1069, trade without a specialist or limit order book. The Exchange believes that this experience, coupled with the need for quick implementation of the contingency plan in order to provide a continuous auction market for FCOs, despite the absence of a specialist, outweighs the benefits of providing a limit order book.

Because the proposal replaces the specialist system with a market maker system, the Exchange proposes to amend certain other rules to clarify that a specialist's traditional responsibilities would not apply under the proposal. For instance, for purposes of Rule 1047, Trading Rotations, Halts and Suspensions, Commentary .01, new paragraph (e) would state that, in accordance with the FCO Market Maker System as defined in Rule 1014(j), the Quote Monitor is responsible for conducting trading rotations in those foreign currency options utilizing the Market Maker System. In addition, Rules 1017 and 1019 would clarify that orders would not be entrusted to a specialist respecting the FCO Market Maker System, as defined in Rule 1014(j).

Because the proposed Quote Monitor functions would involve a new type of activity by Exchange employees, a disclaimer of liability is incorporated into the provision as paragraph (j)(ii). Specifically, in no event shall the Exchange be liable to any person or organization or to its members, participants, member organizations or participant organizations (hereinafter referred to collectively as ''members'') or persons associated therewith for any loss, (including any indirect or consequential loss), expense, damages or claims arising out of any errors or omissions in the collection and dissemination of any foreign currency options quotations by a Quote Monitor.

The Complete text of the proposed rule change is available at the Commission and at the office of the Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[5] in general, and in particular, with Section 6(b)(5),[6] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, as well as to protect investors and the public interest, by providing a contingency plan for the trading of FCOs without an assigned specialist unit.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–35 and should be submitted by December 22, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31390 Filed 11–28–97; 8:45 am]

BILLING CODE 8010–01–M

[4] This procedure is similar to the current procedure used for equity index options when there is a change in contract terms or a transfer of the book. See Floor Procedure Advice A–6.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2981]

State of Illinois; Amendment #1

In accordance with information received from the Federal Emergency Management Agency dated November 14, 1997, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to November 26, 1997.

All other information remains the same, i.e., the deadline for filing applications for economic injury is June 17, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 19, 1997.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 97–31327 Filed 11–28–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week Ending November 21, 1997

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–97–3133.
Date Filed: November 18, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 SATL–EUR 0024 dated October 28, 1997
South Atlantic-Europe Resos R1–21
Correction—PTC12 SATL–EUR 0026 dated October 31, 1997
Minutes—PTC12 SATL–EUR 0027 dated November 11, 1997
Tables—PTC12 SATL–EUR Fares 007 dated November 14, 1997
Intended effective date: April 1, 1998.

Docket Number: OST–97–3141. *Date Filed:* November 20, 1997.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0111 dated November 18, 1997 r1–4
PTC2 EUR 0112 dated November 18, 1997 r5–8
PTC2 EUR 0113 dated November 18, 1997 r9–10
PTC2 EUR 0114 dated November 18, 1997 r11
PTC2 EUR 0115 dated November 18, 1997 r12–17
PTC2 EUR 0116 dated November 18, 1997 r18–19
PTC2 EUR 0117 dated November 18, 1997 r20–21
PTC2 EUR 0118 dated November 18, 1997 r22–25
PTC2 EUR 0119 dated November 18, 1997 r26
PTC2 EUR 0120 dated November 18, 1997 r27
Expedited Europe Resolutions
Intended effective date: as early as December 15, 1997.

Docket Number: OST–97–3142.
Date Filed: November 20, 1997.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 898, Amend Mileage Manual, Telex amending Mail Vote, Intended effective date: December 1, 1997.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–31362 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 21, 1997

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each Application. Following the Answer period DOT may process the applications by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3151.
Date Filed: November 21, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 19, 1997.
Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, applies for: (1) A new or amended certificate of public convenience and necessity to authorize it to provide scheduled foreign air transportation between New York, New York (JFK), on the one hand, and Sao Paulo and Rio de Janeiro, Brazil, on the other hand; and (2) allocation of seven U.S.-Brazil frequencies available for U.S.-Brazil combination services under the terms of the U.S.-Brazil Memorandum of Consultations signed November 18, 1997 (''November MOC'').

Docket Number: OST–95–969.
Date Filed: November 21, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 19, 1997.
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. 41101 and Subpart Q of the Regulations, applies for renewal of Segment 1 of its Experimental Certificate of Public Convenience and Necessity for Route 378, which authorizes Northwest to engage in foreign air transportation of persons, property and mail between the terminal point Chicago, the intermediate points Los Angeles, San Francisco, Seattle or Honolulu, an intermediate point in Japan, and the coterminal points Shanghai, Guangzhou, and Beijing, China. Northwest requests renewal of Segment 1 of its Route 378 Certificate for a period of five years.

Docket Number: OST–97–3152.
Date Filed: November 21, 1997.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 19, 1997.
Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. 41101 and Subpart Q of the Regulations, applies for renewal of its Experimental Certificate of Public Convenience and Necessity for Route 539, which authorizes Northwest to engage in foreign air transportation of persons, property and mail between the coterminal points Guam, Saipan, and Northern Mariana Islands and the terminal point Tokyo, Japan. Northwest requests renewal of Segment 1 of its Route 539 Certificate for a period of five years.

Paulette V. Twine,

Documentary Services.

[FR Doc. 97–31361 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–59]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 15, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Heather Thorson (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 24, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28303.

Petitioner: United Parcel Service.

Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought: To permit the petitioner to substitute a qualified and authorized check airman in place of a Federal Aviation Administration inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least on flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in 14 CFR 121.424.

Dispositions of Petitions

Docket No.: 26029.

Petitioner: Airborne Express.

Sections of the FAR Affected: 14 CFR 121.503(b), 121.505(a), and 121.511(a).

Description of Relief Sought/ Disposition: To permit the petitioner's pilots and flight engineers to complete certain transcontinental flight schedules before being provided with at least 16 hours of rest.

Grant, November 19, 1997, Exemption No. 5167D.

Docket No.: 27180.

Petitioner: EVA Airways Corporation.

Sections of the FAR Affected: 14 CFR 61.77 (a), and (b), and 63.23 (a) and (b).

Description of Relief Sought/ Disposition: To permit the issuance of U.S. special purpose pilot authorizations and special purpose flight engineer certificates to airmen employed by the petitioner without those airmen meeting the requirement to hold a current foreign certificate of license issued by a foreign contracting State to the International Civil Aviation Organization, provided the airmen hold appropriate certificates issued by the Civil Aeronautics Administration, Republic of China.

Grant, November 19, 1997, Exemption No. 6689A.

[FR Doc. 97–31356 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Streamlining Software Aspects of Certification Industry Workshop

AGENCY: Federal Aviation Administration.

ACTION: Notice of Industry Workshop.

SUMMARY:

Background

In April 1997, the Federal Aviation Administration (FAA) initiated the Streamlining Software Aspects of Certification (SSAC) program. The overall goal of this program is to reduce the cost and time of certifying systems with software while maintaining or increasing system safety.

The purpose of this program is: (1) to determine scientifically if the time/ expense burden yields the safety benefits; (2) to recommend improvements; and (3) to prototype those improvements.

The FAA assembled a team of experts to accomplish this purpose. The team is led by NASA Langley Research Center and includes software experts Dr. Nancy Leveson and Dr. John Knight.

Workshop Announcement

On January 7–8, 1998, an SSAC Industry Workshop will be held starting at 8:30 am. The workshop will be held at TRW Government Information Services Division at One Federal Systems Park Drive (Building FP1) in Fairfax, Virginia. The purpose of the SSAC Workshop is to enable the FAA and the SSAC research team to listen to industry's concerns about the software aspects of the certification process. The FAA is seeking industry participants who can relate their concerns through experience and involvement in the system certification process.

During the workshop, the SSAC team seeks input about: (1) the impact of DO–178B on each organization; (2) experiences with certification authorities; and (3) issues with the certification process believed to add cost and delay without affecting the quality of safety.

Upon conclusion of the workshop, the FAA will follow up by researching the issues voiced by industry, providing feedback, and sharing the results of this research effort. The key to the success of the workshop and the success of the SSAC program depends upon industry participation, input, and support.

Attendance is open to the appropriate industry participants. Persons wishing to receive additional information should contact the SSAC Assistant Program Manager, Bonnie Danner: TRW Government Information Services Division; One Federal System Park Drive; Fairfax, VA 22033–4416; 202–651–2254 (phone); or 202–484–1255 (fax).

Issued in Washington, DC on November 24, 1997.

Abbas Rizvi,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–31357 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–68; Notice 9]

Reports, Forms and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can require collection of certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established under the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes a proposed collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 30, 1998.

ADDRESSES: Comments must refer to the notice and docket numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided as the Proposed Part 577 Information Collection. It is requested, but not required, that one (1) original plus two (2) copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each NHTSA request for OMB approval of a collection of information may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, S.W., Room 5110, Washington, DC 20590. The telephone number is (202) 366–2589.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document soliciting public comments in the **Federal Register**, with a 60-day comment period, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in the **Federal Register** document. Under OMB's regulations (found at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comment on the following proposed collection of information:

Amendment to Part 577 Requirements for Notification of Dealers by Manufacturers of Motor Vehicles or Motor Vehicle Equipment with Safety-Related Defects or Noncompliances with Federal Motor Vehicle Safety Standards

Type of Request—Clearance for new collection.

OMB Clearance Number—Not applicable. New collection.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date for Approval—Three years after date of approval.

Summary of the Collection of Information—This collection of information applies to manufacturers of motor vehicles and items of motor vehicle equipment when it is decided that a vehicle or item of equipment they manufacture contains a safety-related defect or fails to comply with a Federal motor vehicle safety standard (FMVSS). Manufacturers are required by statute to notify dealers when it is decided that safety-related defects or noncompliances exist. The agency has proposed an amendment to 49 CFR Part 577, Defect and Noncompliance Notification, to establish a time limit within which the manufacturers must notify the dealers and to require that certain information about dealer rights and responsibilities with respect to the defective or noncomplying vehicles or equipment be included in the notification.

Description of the Need for Information and Proposed Use of the Information—Dealers of vehicles or equipment that are the subject of safety recalls need to receive notification of safety recalls from manufacturers promptly after the decision is made to recall, including information about the prohibition against selling from inventory vehicles that have been determined to be subject to recall. This prompt notification will minimize the likelihood that dealers will sell unsafe vehicles or equipment from their inventories before the defect or noncompliance is remedied. It is also necessary for dealers to be informed of their statutory rights vis a vis manufacturers so that they will not fail to participate in recalls due to erroneous beliefs about who must bear financial responsibility for providing the remedy for the defect or noncompliance.

Description of the Likely Respondents (Including Estimated Number) and Proposed Frequency of Response to the Collection of Information—The estimated number of vehicle and equipment manufacturers subject to this rule is 500. The agency estimates that in any given year the number of safety recalls is approximately 300, based on the average number of recalls per year from 1993 through 1996. A manufacturer is required to provide notification in compliance with this rule only if it is conducting a safety recall. The frequency of response to the collection of information depends on the number of safety recalls a manufacturer conducts.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The hour burden on respondents from the final rule will arise from the time manufacturers will spend in rewriting their dealer notification letters to include the additional information specified in the rule, and in writing letters to NHTSA to request a delay in providing dealer notification beyond the five days specified in the rule.

The agency estimates that the average time needed for a manufacturer to revise the language of a dealer notification letter to include the newly-required language will be ½ hour. This is based on the assumption that most manufacturers use a form letter as the basis for their dealer notification letters; and that those few that do not do so experience very few, if any, recalls in a year.

The total number of hours needed for all 500 potentially affected

manufacturers to modify their dealer notification letters is 250 hours (500 manufacturers × ½ hour letter modification time). However, the agency estimates that in any given year that 85 percent of the 300 annual recalls are conducted by approximately 50 manufacturers who conduct more than one safety recall per year on a regular basis. The remaining 45 recalls per year (15 percent) are conducted by manufacturers who conduct recalls on an infrequent basis. In year one the agency estimates that all 50 of the manufacturers who conduct recalls on a regular basis along with 45 manufacturers who conduct recalls on an infrequent basis will have to modify their dealer notification letters, resulting in 95 out of the 500 affected manufacturers having to modify their dealer notification letters in year one. In years two through ten 45 of the remaining 405 remaining manufacturers who conduct recalls infrequently will have to modify their dealer notification letters each year. This would result in an annual hour burden of 47.5 hours for the first year (95 affected manufacturers × ½ hour letter modification time) and 22.5 hours for the second through tenth years (45 affected manufacturers per year × ½ hour letter modification time).

This burden will be a one-time occurrence because the rule will impose little or no time burden for recalls after the first one a manufacturer conducts after revising its dealer notification letter. Manufacturers are already required by statute to notify their dealers about safety recalls. This rule does not alter the information that a manufacturer is now required to provide to dealers about individual recalls.

The agency expects that for 20 percent of the safety recalls conducted annually—or about 60—the manufacturer will request a delay in sending dealer notification. The agency estimates that the average preparation time for such a letter will be about ½ hour. Accordingly, the total annual hour burden hours for preparing letters requesting a delay in providing dealer notification will be about 30 hours (60 recalls × ½ hour per recall).

The agency estimates that the total annual hour burden on respondents of the information collection requirement of this final rule will be 30 hours, plus a one-time burden of 250 hours, spread over a period of ten years.

The agency estimates that the hourly labor cost for manufacturers for revising the dealer notification letters will be $50. With the estimated ½ hour needed to revise the letter for each of 500 manufacturers, the total labor cost of revising the dealer notification letters would be $12,500. Since the number of safety recalls per year is approximately 300, not all manufacturers will incur the cost of revising the letter in the same year. If 95 manufacturers modify their dealer notification letters in year one and 45 of the remaining 405 manufacturers modify their dealer notification letters in years two through ten, the cost would be spread over a minimum of ten years. This would result in an annual cost burden of $2,375 for the first year and $1,125 per year for the second through tenth years.

As stated earlier, the burden is likely to be a one-time occurrence in most cases, since most manufacturers use form notifications that will only need to be revised once. After a manufacturer has revised its form notification, the cost of subsequent letters will be no greater than that for the notification that a manufacturer is presently required by statute to send to dealers.

The agency estimates that the labor cost to manufacturers for preparation of requests for delay of dealer notification will also be about $50 per hour. Thus, for 60 such requests per year, with an average preparation time of ½ hour each, the annual labor cost to manufacturers will be approximately $1,500.

In summary, the agency estimates that the total annual cost to respondents will be approximately $1,500, plus a one-time-only cost of $12,500, spread over a period of ten years.

There is no recordkeeping burden associated with this rulemaking.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Dated: November 24, 1997.

Kenneth N. Weinstein,

Associate Administrator For Safety Assurance.

[FR Doc. 97–31363 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3156]

Notice of Receipt of Petition for Decision That Nonconforming 1973–1975 Volkswagen Type 181 (''The Thing'') Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1973–1975 Volkswagen Type 181 (''The Thing'') multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1973–1975 Volkswagen Type 181 (''The Thing'') MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 31, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: U.S. Department of Transportation Dockets, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 10 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then

publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1973–1975 Volkswagen Type 181 (''The Thing'') MPVs are eligible for importation into the United States. The vehicles which Wallace believes are substantially similar are 1973–1975 Volkswagen Type 181 (''The Thing'') MPVs that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1973–1975 Volkswagen Type 181 (''The Thing'') MPVs to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that non-U.S. certified 1973–1975 Volkswagen Type 181 (''The Thing'') MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1973–1975 Volkswagen Type 181 (''The Thing'') MPVs are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* inscription of appropriate words or symbols to identify the controls for the hazard warning signal, the windshield defrosting and defogging system, the lights. The petitioner states that the vehicle is equipped with an odometer that is labeled at the factory as being calibrated in kilometers, precluding the need for any alteration to comply with the standard.

Standard No. 103 *Defrosting and Defogging System:* replacement with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlights; (b) installation of U.S.-model front turn signal lamps; (c) installation of U.S.-model taillight assemblies.

Standard No. 111 *Rearview Mirror:* installation of a passenger side rearview mirror.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) Replacement of the seat belts in the front seating positions with U.S.-model components; (b) installation of U.S.-model seat belts in the rear seating positions.

Standard No. 209 *Seat Belt Assemblies:* replacement of all seat belt assemblies supplied with the vehicle.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 24, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–31439 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 97–3157]

Notice of Receipt of Petition for Decision That Nonconforming 1996 Audi Avant Quattro Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1996 Audi Avant Quattro passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1996 Audi Avant Quattro that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 31, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: U.S. Department of Transportation Dockets, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1996 Audi Avant Quattro passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1996 Audi A6 Quattro that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1996 Audi Avant Quattro to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1996 Audi Avant Quattro, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1996 Audi Avant Quattro is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1996 Audi Avant Quattro comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters if they are not U.S.-model components. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 24, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–31440 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 9:30 a.m., December 3, 1997, via conference call in the Association Administrator's Conference Room, SLSDC Administration Building, 180 Andrews Street, Massena, New York. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later

than December 1, 1997, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on November 24, 1997.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 97–31354 Filed 11–28–97; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33511]

Emons Transportation Group, Inc.—Continuance in Control Exemption—Penn Eastern Rail Lines, Inc.

Emons Transportation Group, Inc. (Emons), has filed a notice of exemption to continue in control of Penn Eastern Rail Lines, Inc. (PERL), upon PERL's becoming a Class III railroad. The transaction was expected to be consummated on or about November 20, 1997, the effective date of the exemption.

This transaction is related to STB Finance Docket No. 33512, *Penn Eastern Rail Lines, Inc.—Acquisition and Operation Exemption—Lines of Lancaster Northern Railway, Inc., Chester Valley Railway, Inc., East Penn Railways, Inc., and Bristol Industrial Terminal Railway, Inc.,* wherein PERL seeks to acquire and operate certain rail lines from Lancaster Northern Railway, Inc., Chester Valley Railway, Inc., East Penn Railways, Inc., and Bristol Industrial Terminal Railway, Inc.

Emons controls through stock ownership three other Class III rail carriers: Maryland and Pennsylvania Railroad Company, operating 26 miles of rail line between York and Hanover, PA; Yorkrail, Inc., operating approximately 16 miles of rail line between York and Porters Sideling, PA; and, St. Lawrence & Atlantic Railroad Company, operating between Portland, ME, and the Canadian border at Norton, VT.

Emons states that: (1) PERL will not connect with any of the other railroads in its corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect PERL with any other railroad in its corporate family; and (3) the transaction does not involve a Class I railroad. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C.10502(g), the board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III railroad carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33511, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading mustbe served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036.

Decided: November 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31385 Filed 11–28–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33512]

Penn Eastern Rail Lines, Inc.; Acquisition and Operation Exemption; Lines of Lancaster Northern Railway, Inc., Chester Valley Railway, Inc., East Penn Railways, Inc., and Bristol Industrial Terminal Railway, Inc.

Penn Eastern Rail Lines, Inc. (PERL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase of certain rail lines and assignment of certain leases on other rail lines) and operate approximately 45.24 [1] miles of rail lines (the Subject Lines) of Lancaster Northern Railway, Inc. (LANO), Chester Valley Railway, Inc. (CVR), East Penn Railways, Inc. (EPRY), and Bristol Industrial Terminal Railway, Inc. (Bristol). PERL will become a Class III rail carrier.[2]

PERL, LANO, CVR, EPRY and Bristol have entered into an agreement providing for PERL's acquisition of all the rights, title and interests in the Subject Lines. PERL intends to consummate the purchase agreement and begin operations on or soon after November 20, 1997, the effective date of the exemption.

CVR owns and operates the Bridgeport Industrial Track, between the connection with the Consolidated Rail Corporation (Conrail) at approximately milepost 0.0 and milepost 2.14 at Henderson Road. This 2.14-mile rail line is located entirely within Bridgeport, Montgomery County, PA.

LANO owns and operates the Akron Secondary Track, between approximately milepost 0.05 at Sinking Spring, Berks County, PA, and the end of the track at Stevens, approximately milepost 12.94, in Lancaster County, PA.

EPRY operates four rail lines as follows: (1) The Perkiomen Branch, USRA Line No. 906, between milepost 22.38 at Pennsburg, PA, and milepost 38.23 at Emmaus Jct., Emmaus, PA, a distance of 15.85 miles, in Berks, Lehigh, and Montgomery Counties, PA; (2) the Colebrookdale Industrial Track (Boyertown Branch), USRA Line No. 909, between milepost 0.00 at Colebrookdale Jct. (Pottstown), PA and milepost 8.60 at Boyertown, PA, a distance of 8.60 miles, in Berks and Montgomery Counties, PA; (3) the Kutztown Branch, USRA line No. 910, between milepost 0.17 at Topton, PA, and milepost 4.29 at Kutztown, PA, a distance of 4.12 miles, in Berks County, PA; and (4) the Mt. Hope Industrial Branch, USRA Line No. 916, between milepost 0.36 and milepost 1.0, a distance of .64 miles, in Manheim, Lancaster County, PA. The lines were acquired by the Commonwealth of Pennsylvania in 1982 and were formerly operated by Blue Mountain and Reading Railroad Company.[3] They connect with Conrail at Emmaus, Pottstown, Topton and Manheim, PA.

Bristol leases and operates approximately 1 mile of rail line

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[1] In the verified notice of exemption, PERL states that the total miles of rail line to be acquired and operated totals approximately 44 route miles, but other references in the notice, which identify the mileposts and the route miles for each specific segment of rail line, total approximately 45.24 route miles.

[2] This proceeding is related to STB Finance Docket No. 33511, wherein Emons Transportation Group, Inc., a noncarrier, has filed a notice of exemption to continue in control of PERL upon PERL's becoming a Class III rail carrier.

[3] See Blue Mountain and Reading Railroad Company—Modified Rail Certificate, Finance Docket No. 30305 (Sub-No. 1) (ICC served June 13, 1990).

extending between a connection at Grundy and a point within the Bristol Industrial Park, in Bristol Township, Bucks County, PA.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33512, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, N.W., Suite 400, Washington, DC 20036.

Decided: November 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31384 Filed 11–28–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–66

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 Notice 97–66, Certain Payments Made Pursuant to a Securities Lending Transaction.

DATES: Written comments should be received on or before January 30, 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: Certain Payments Made Pursuant to a Securities Lending Transaction.

OMB Number: 1545–1566.

Notice Number: Notice 97–66.

Abstract: Notice 97–66 modifies final regulations which were effective November 14, 1997. The Notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and sale-repurchase transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 377,500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 61,750.

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: November 18, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–31402 Filed 11–28–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretations regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 22–97

Question Presented

May the Department of Veterans Affairs (VA) withhold monthly benefits from beneficiaries in situations where the payee refuses to participate in the Electronic Funds Transfer Program?

Held

The Secretary has authority under the DCIA to withhold monthly VA benefits to a recipient of Federal payments subject to the EFT program if the recipient has not complied with the statutory EFT requirements and is not entitled to a waiver of their application.

Effective Date: June 20, 1997.

VAOPGCPREC 23–97

Question Presented

Where a claimant has arthritis and instability of the knee, does 38 CFR 4.71a authorize multiple ratings under diagnostic codes 5003 and 5257?

Held

A claimant who has arthritis and instability of the knee may be rated separately under diagnostic codes 5003 and 5257.

Effective Date: July 1, 1997.

VAOPGCPREC 24–97

Question Presented

Is a veteran who is receiving compensation pursuant to 38 U.S.C. 1151 due to blindness in both eyes which resulted from the veteran's hospitalization, medical, or surgical treatment by VA, and not incurred or aggravated in the line of duty in the active military, naval, or air service, eligible for a special housing adaptation grant under chapter 21 of title 38, United States Code?

Held

A veteran with a disability that resulted from VA hospitalization or medical or surgical treatment who has been determined eligible for compensation ''as if'' such injury were service connected pursuant to 38 U.S.C. 1151 is not eligible for a special housing adaptation grant as a result of the disability caused by VA medical care.

Effective Date: July 3, 1997.

VAOPGCPREC 25–97

Question Presented

Should military retired pay that is paid directly to a veteran's ex-spouse by a military finance center pursuant to a divorce decree or garnishment order be considered income of the veteran for purposes of determining his or her entitlement to Department of Veterans Affairs (VA) need-based benefits?

Held

Whether military retired pay paid directly to a veteran's ex-spouse by a military finance center pursuant to a divorce must be included in the veteran's annual income for purposes of determining eligibility for need-based veterans' benefits is dependent upon the property rights of the parties in the military retired pay, as determined in the pertinent divorce decree and any related property settlement, interpreted in light of applicable state law. Where, in a divorce proceeding, military retired pay is treated as marital property and divided between the parties to the proceeding, only that portion of the retired pay which is determined to be the property of the veteran is countable as income of the veteran for purposes of determining entitlement for need-based veterans' benefits. Where no such division of property has occurred, the full amount of such retired pay is attributable to the veteran, regardless of whether all or a portion of the retired pay is paid directly to the veteran's ex-spouse pursuant to a voluntary or involuntary allotment or a garnishment order.

Effective Date: July 16, 1997.

VAOPGCPREC 26–97

Question Presented

Was the addition of a diagnosis of post-traumatic stress disorder (PTSD) to the rating schedule, effective April 11, 1980, ''a liberalizing law, or a liberalizing [Department of Veterans Affairs (VA)] issue'' of 38 CFR 3.114(a)?

Held

The addition of PTSD as a diagnostic entity in the schedule for rating mental disorders was a ''liberalizing VA issue'' for purposes of 38 CFR 3.114(a). However, an effective date prior to the date of claim cannot be assigned under section 3.114(a) unless the claimant met all eligibility criteria for the liberalized benefit on April 11, 1980, the effective date of the regulatory amendment adding the diagnostic code for PTSD, and such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement.

Effective Date: July 16, 1997.

VAOPGCPREC 27–97

Question Presented

Whether service on a naval vessel in the waters off the shore of Vietnam constitutes service in the Republic of Vietnam for purposes of 38 U.S.C. 101(29)(A), which defines the Vietnam era as the period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.

Held

Service on a deep-water naval vessel in waters off the shore of the Republic of Vietnam does not constitute service in the Republic of Vietnam for purposes of 38 U.S.C. 101(29)(A), as added by section 505 of the Veterans' Benefits Improvements Act of 1996, which provides that the term ''Vietnam era'' means the period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.

Effective Date: July 23, 1997

VAOPGCPREC 28–97

Question Presented

Whether a person insured under Service Disabled Veterans' Insurance, who does not receive a waiver of premiums pursuant to 38 U.S.C. 1912 because the insured died prior to the continuance of total disability for six consecutive months, is nonetheless eligible for supplemental Service Disabled Veterans' pursuant to 38 U.S.C. 1922A.

Held

A person insured under Service Disabled Veterans' Insurance, who does not qualify for a waiver of premiums pursuant to 38 U.S.C. 1912 because the insured died prior to the continuance of total disability for six months, is not eligible for supplemental Service Disabled Veterans Insurance pursuant to 38 U.S.C. 1922A.

VAOPGCPREC 29–97

Question Presented

Does 38 C.F.R. 3.105(e) apply to cases subject to the special settlement review under the provisions of the October 15, 1993, Stipulation and Order in *Fernando Giusti Bravo, et al* v. *U.S. Department of Veterans Affairs, et al.*, where there is no reduction of a service-connected disability rating which results in reduction or discontinuance of compensation payments currently being made?

Held

38 C.F.R. 3.105(e) applies to cases subject to the special settlement review under the provisions of the October 15, 1993, Stipulation and Order in *Fernando Giusti Bravo, et al.* v. *U.S.*

Department of Veterans Affairs, et al. only where there is a reduction of service-connected disability rating which results in reduction or discontinuance of compensation payments currently being made. Thus, the provisions of section 3.105(e) which require VA to provide a proposed rating action and a 60-day pretermination notice are inapplicable where there is no reduction of a service-connected disability rating which results in reduction or discontinuance of compensation payments currently being made.

Effective Date: August 7, 1997.

VAOPGCPREC 30–97

Question Presented

What level of special monthly compensation (SMC) should be awarded to a claimant with nonservice-connected paraplegia who is entitled to compensation under 38 U.S.C. 1151 for disarticulation of the hips?

Held

Regardless of preexisting paraplegia, SMC is payable at the rate prescribed in 38 U.S.C. 1114(n) to a claimant who is entitled to compensation for bilateral disarticulation of the hips under 38 U.S.C. 1151.

Effective Date: August 29, 1997.

VAOPGCPREC 31–97

Question Presented

If the Board of Veterans' Appeals concludes upon reconsideration that the Department of Veterans Affairs Regional Office erred in determining the effective date of a reduction in compensation pursuant to 38 U.S.C. 5112(6) and 38 CFR 3.105(e), does that error render the decision reducing the rating void ab initio, requiring reinstatement of the prior rating?

Held

The reduction of a disability rating, if otherwise supportable, is not rendered void ab initio by virtue of error in the assignment of the effective date for it.

Effective Date: August 29, 1997.

VAOPGCPREC 32–97

Question Presented

When a claimant has service-connected, partial hearing loss in only one ear, should the hearing in the other ear be considered normal for purposes of rating the service-connected hearing loss?

Held

If a claimant has service-connected hearing loss in one ear and nonservice-connected hearing loss in the other ear, the hearing in the ear having nonservice-connected loss should be considered normal for purposes of computing the service-connected disability rating, unless the claimant is totally deaf in both ears.

Effective Date: August 29, 1997.

VAOPGCPREC 33–97

Question Presented

Are assets which are placed in an irrevocable special needs trust includable in the claimant's net worth for purposes of determining eligibility for improved pension?

Held

Assets transferred by a legally competent claimant, or by the fiduciary of a leagally incompetent one, to an irrevocable ''living trust'' or an estate-planning vehicle of the same nature designed to preserve estate assets by restricting trust expenditures to the claimant's ''special needs,'' while maximizing the use of governmental resources in the care and maintenance of the claimant, should be considered in calculating the claimant's net worth for improved-pension purposes.

Effective Date: August 29, 1997.

VAOPGCPREC 34–97

Question Presented

Does 38 U.S.C. 3104(b) or any other statute or regulation, e.g., Department of Labor Rehabilitation Act of 1973 and associated regulations, either require or preclude VA from assisting appellant in purchasing a computer and related materials for recreational activities?

Held

1. No statute or regulation, including section 702 of the Rehabilitation Act of 1973 and its associated regulations, either specifically directs VA to authorize or precludes VA from authorizing services and assistance of a recreational nature as a component of an eligible veteran's program of independent living services and assistance under 38 U.S.C. 3120.

2. VA has the authority, and responsibility, to provide all services and assistance deemed necessary on the facts of the particular case to enable an eligible veteran participating in such a program to live and function independently in his or her family and community without, or with a reduced level of, the services of others. This includes the authority to approve, when appropriate, services and assistance that are in whole or part recreational in character when the services are found to be needed to enable or enhance the veteran's ability to engage in family and community activities integral to the veteran's achieving his or her independent living program goals.

Effective Date: November 5, 1997.

By the Direction of the Secretary:

Robert E. Coy,

Acting General Counsel.

[FR Doc. 97–31329 Filed 11–28–97; 8:45 am]

BILLING CODE 8320–01–P–M

Corrections

Federal Register

Vol. 62, No. 230

Monday, December 1, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

Correction

In rule document 97–26578, beginning on page 52929, in the issue of Friday, October 10, 1997, make the following correction:

§ 17.4 [Corrected]

On page 52934, in the third column, in § 17.4(c)(7), in the fourth line, ''11'' should read ''1''.

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federal register

Monday
December 1, 1997

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Revised Test Protocol for Nontoxic Approval Procedures for Shot and Shot Coating; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AB80

Migratory Bird Hunting: Revised Test Protocol for Nontoxic Approval Procedures for Shot and Shot Coatings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The purpose of this action is to revise the current nontoxic shot approval procedures by establishing a tiered approval process. Shot or shot coating approval is considered at each tier. An environmentally benign shot or a minor modification of previously approved shot may receive nontoxic approval after the first tier contingent on existence of appropriate toxicological data and an ecological risk assessment. If not, further testing would be required.

DATES: This final rule takes effect December 31, 1997.

ADDRESSES: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C ST., NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul Schmidt, Chief, or Carol Anderson, Wildlife Biologist, Office of Migratory Bird Management, 703/358–1714.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) is revising the existing nontoxic shot and shot coating approval procedures (50 CFR 20.134) by establishing a three-tier approval process. Shot or shot coating approval is considered at each tier. An environmentally benign shot or a minor modification of previously approved shot may receive nontoxic approval after the first tier contingent upon the existence of appropriate toxicological data and an ecological risk assessment. The Service has modified the existing regulation because:

1. From an ecosystem management perspective, in addition to waterfowl, we need to evaluate species such as invertebrates and fish as these provide a food base for many waterfowl species;

2. Since the original regulations were in effect, advancements in the field of ecological risk assessment can be applied to this process;

3. Reduction of time, expense and burden on the Federal Government and applicants can occur without risk to wildlife; and

4. From an animal welfare standpoint, reduction in numbers of test animals used can occur without risk to wildlife.

The original procedures were put in place in 1986 and the first submission requesting approval of nontoxic shot came in October of 1993. Our experience with this shot approval process has shown that the procedures need modification to accommodate situations where existing information can minimize the need for full testing. Thus, the Service and the U.S. Geological Survey—Biological Resources Division cooperatively have developed an alternative set of procedures for evaluating nontoxic shot and shot coatings to replace the testing requirements presently in effect. As with the current procedures, the new set of approval procedures carry the requirement that the applicant carry the burden of providing that the candidate shot or shot coating is nontoxic.

The system has three tiers, with each tier enhancing the information base on the candidate material. Those candidate materials where appropriate background information, toxicological data, ecological risk assessment, and reproductive effects information are available demonstrating the candidate material to be benign may receive nontoxic approval. Those candidate materials not approved as a result of subjecting them to the standards set at Tier 1 will be subject to the standards of Tier 2, Tier 3, or both.

Tier 1 sets out comprehensive and detailed requirements that must be provided to the Service in order to consider approval. After evaluation of Tier 1 information, the Service will determine to grant or deny approval, or require testing of Tier 2, Tier 3, or both.

The scope of Tier 1 includes: (1) Physical and chemical characterization of candidate shot or shot coating; (2) information on the toxicity of the candidate material; (3) an ecological risk assessment; and (4) effects on reproduction in water birds of the candidate material.

The scope of Tier 2 includes *in vitro* erosion rate testing, short-term (30-day) acute toxicity testing on mallards, and toxicity tests with invertebrates and early-life stage vertebrates to assess potential impacts on waterfowl habitat. The inclusion of lead shot (positive) and steel shot (negative) control groups in the waterfowl feeding studies is necessary to account for the experimental variability associated with: (1) Tests performed by different laboratories; (2) a series of tests performed within a given laboratory; and/or (3) an individual test, given changing conditions which are beyond control of the experimental protocol. Further, although the positive control group is essential to every shot ingestion study series, the Service has considered the documented history of the results of lead shot ingestion by waterfowl and reduced the numbers of birds required for that aspect of the protocol.

The scope of Tier 3 includes chronic exposure under adverse environmental conditions and effects on reproduction in mallards.

Modification of the experimental procedures to address the specific composition and erosion characteristics of the candidate shot or shot coating may be made by the Service, if necessary. If the candidate shot or shot coating is not metal or metalloid, the Service, with the applicant, may develop other equivalent testing procedures to evaluate the effects of the components of the candidate shot and/or shot coating.

Statistical analyses are to be performed on all data from each test. For the purpose of this section (20.134) the terms *significant* and *significantly* refer to a ($P \leq 0.05$) finding of significance.

Other conditions of final approval include residual lead levels and noninvasive field testing devices. The Service has established a maximum environmentally acceptable level of lead in shot as trace amounts of <1 percent (August 15, 1995, 61 FR 42492). Any shot manufactured with lead levels equal to or exceeding 1 percent are toxic and therefore, illegal. Further, the Service has established approval contingent upon the availability of a noninvasive field testing device (August 15, 1996, 61 FR 42492) to determine shot material in the shell in the field.

A schematic representation of the approval process follows:

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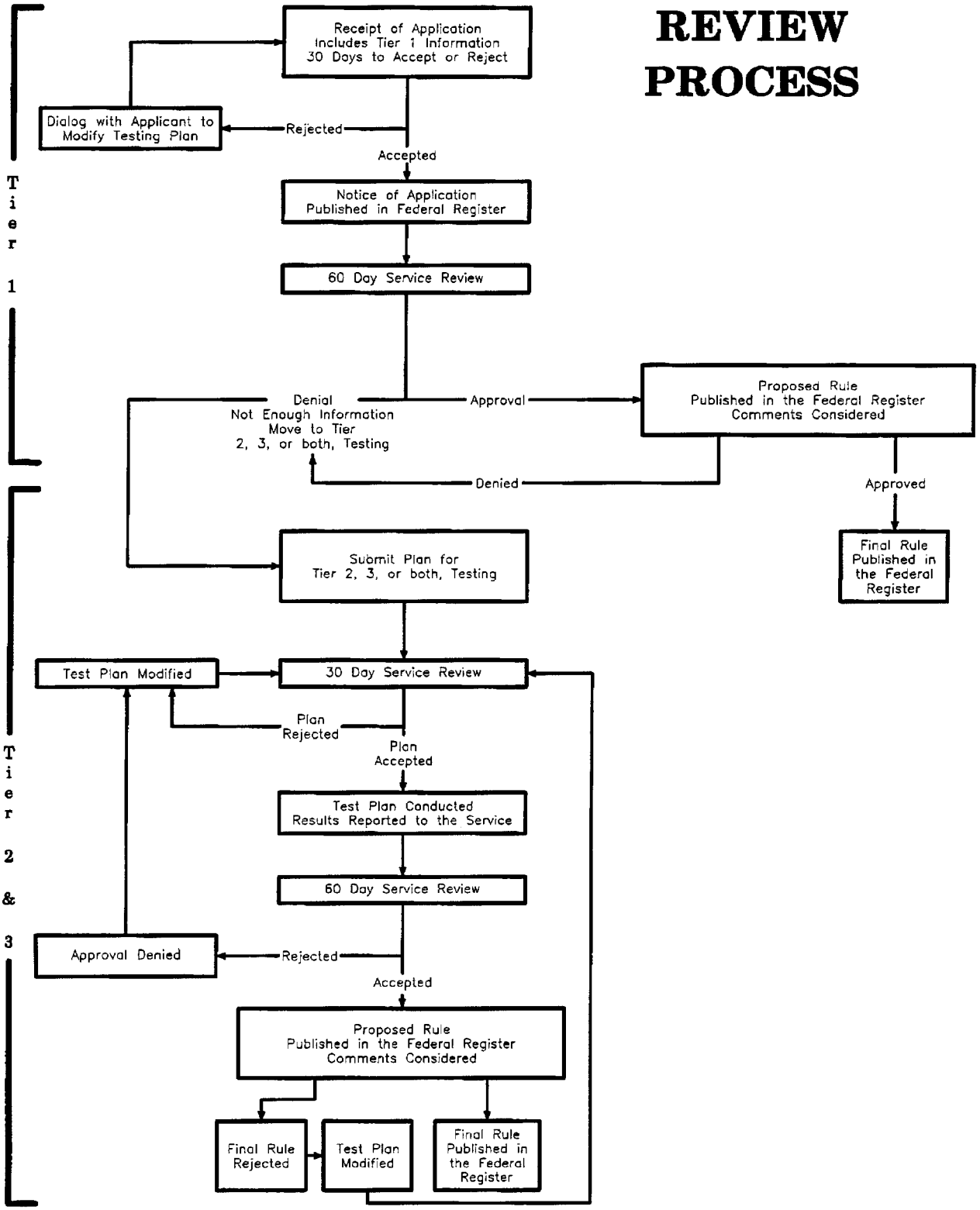

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The intent of the shot and shot coating approval procedure is to ensure that, in addition to waterfowl, other natural resources will be protected. Furthermore, materials that toxicologically are innocuous will complete the procedures at lower cost and with less paperwork for both the Service and the applicant.

In summary, the purpose of this rule is to revise the current shot approval procedures and to include shot coatings.

Public Comment and Responses

The January 26, 1996, proposed rule published in the **Federal Register** (61 FR 2470) invited comments from interested parties. The closing date for receipt of all comments was May 10, 1996. During this 115-day comment period, the Service received five comment letters. A brief summary of those comments and the Service's response follows:

The National Institute of Environmental Health Sciences limited their comments to the toxicity testing (clinical observation, tissue analysis, and histopathology) of bismuth only, and as such, are not incorporated into the overall testing protocol.

The Missouri Department of Conservation asked if coatings of copper, nickel, and zinc on steel shot, which already are approved, will have ''grandfathered'' approval. Yes, they will. In December of 1986, based on a review and evaluation of information in an environmental assessment, the Director issued a Finding Of No Significant Impact and chose to approve the use of copper or nickel coating on steel shot. In May of 1993, based on information from the National Biological Survey (now the Biological Resources Division of the U.S.G.S.), the Service, and manufacturers, the Service issued an approval for zinc chloride and/or zinc chromed coating. These coatings will retain the Service's approval. However, the Service may reconsider both approvals at some future date if it is determined that the coatings may be creating toxicological problems for migratory birds.

The Wisconsin Department of Natural Resources requested deletion of ''the requirement for assessing toxicity after complete absorption [because] we suspect that most substances that would pass all of the other tests would fail this test.'' This is a worst-case scenario assumed in the risk assessment, and not an actual toxicity test that the applicant must complete. To ensure that waterfowl will be protected, this analysis must be completed.

The National Wildlife Federation expressed concern that the Service's proposal to ''scale back the testing procedures'' will increase the potential for environmental harm. The Service's decision to revise the present testing protocol is based on scientific advancements in risk assessment, toxicity testing, and modeling. In actuality, the new test protocol is far more demanding and scientifically rigorous than the current three phase nontoxic shot approval process because it approaches the issue from an ecosystem management perspective incorporating recent advancements in science. The new test protocol will increase protection of the environment by incorporating an ecosystem approach and multi-species testing rather than just a single species test with mallards. The NWF also commented that ''the USFWS argues that from an animal welfare standpoint, the numbers of test animals used can be reduced. In fact, it can be said that granting approval for a shot compound which has not been throughly tested makes the whole of the wild waterfowl population test animals.'' Under the current testing procedures, the entire ecosystem is the test subject because it ignores every environmental and biological component other than waterfowl. The Service is striving for a balanced ecosystem approach to testing without being overly burdensome. Instead of using large numbers of one species, the Service is incorporating the test with several different species. The NWF also stated that, ''there are numerous cases (e.g., the pesticide DDT) in which the harmful effects of a product became apparent only after loss of reproductive viability of wildlife became chronic, by which time the environmentally harmful substance was widely dispersed throughout the ecosystem.'' Reproductive test data is an integral part of the new test protocol. We recognize the importance of reproductive testing, and its importance in determining the safety of a product. A reproductive assessment with no adverse or inconclusive results is required for final approval of a candidate material as nontoxic. ''We [NWF] remain firmly opposed to granting full or final approval without completion of all three phases of testing. At a minimum, conditional approval should be granted only after the currently mandated phase one testing is complete.'' Granting of final approval will occur only when an applicant sufficiently has satisfied Tier 1 and shown the candidate material to be nontoxic. If Tier 1 testing results are inconclusive, completion of Tier 2, Tier 3, or both will be required showing the candidate material to be nontoxic. This does not mean that completion of each tier by each applicant is always necessary. For example, if toxicity or reproductive data on the candidate material and mallards already exists, it may be incorporated into the Tier 1 package and may be sufficient to determine that the shot and/or shot coating should be approved.

Safety Shot General Partner, Inc. reiterates their original concerns from their August 27, 1991, letter on the proposed protocol. Safety Shot states that ''the proposed rule appears to address our concerns about timing issues and unreasonable testing.''

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), the Service prepared an Environmental Assessment (EA) in November, 1996. This EA is available to the public at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634-ARLSQ, 1849 C Street NW., Washington D.C. 20240. Based on review and evaluation of the information in the EA, the Service determined the action to amend 50 CFR 20.134 would not be a major Federal action that significantly would affect the quality of the human environment.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' The Service completed a Section 7 consultation under the ESA for this rule. The conclusion of that consultation is that the long-term effect of the rule would be beneficial, and that the rule itself is not likely to adversely affect listed species. However, as the nature of substances to be reviewed is not known at this time, each application will be reviewed for potential effects to listed species. The result of the Service's consultation under Section 7 of the ESA is available to the public through the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634 ARLSQ, 1849 C Street NW., Washington D.C. 20240.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. Since this is a revision to existing procedures designed to reduce cost and time requirements in determining the toxicity of a candidate material, this rule will have no significant effect on small entities. No dislocation or other local effects, with regard to hunters and others, are apt to be evidenced. The information collection requirements contained within this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned Clearance Number 1018–0067 which expires on 06/30/2000. The information must be provided in order to obtain the benefit of being approved as nontoxic shot. This information is being collected to evaluate an applicant's candidate material.

The likely respondents to this collection of information will be companies producing and/or marketing shot and/or shot coatings who wish to obtain approval of the candidate shot as nontoxic for use in hunting waterfowl and coots. In order to make this decision, the Service requires that applicants submit information collected about the toxicity of their candidate material to migratory birds and the environment. This data provides the bulk of the application. The information from scientific literature, risk assessment analysis, and toxicity studies, will be gathered and packaged by the applicant. The Service expects to receive one request each year. The annual burden of reporting and record keeping is estimated to be about 3,200 hours.

The principal economic effect of this rule will be to allow sport hunting retailers sales of more nontoxic shot types. This will provide some additional sales, however these sales are within a niche market and not likely to dislocate any other products. It is thought that these sales may slightly reduce some of the lead shot sales. The overall effect to hunting expenditures in general will be minor. This rule will accommodate situations where existing information can minimize the need for full testing thereby reducing the time, expense, and burden on the Federal Government and applicant without risk to wildlife. Therefore, this rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866.

The potential applicants are likely to be small entities, therefore, the economic effects as described in Executive Order 12866 are the same or similar to the economic impacts of annual hunting on small business entities. The economic impacts of annual hunting on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis), under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), was issued by the Service in 1995 (copies available upon request from Office of Migratory Bird Management). The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1991 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $10 and $59 million at small businesses in 1995. The approval of other nontoxic alternative shot to steel will have a minor positive impact on small businesses by allowing them to sell an additional nontoxic shot to the hunting public. However, the overall effect to hunting expenditures in general would be minor.

Unfunded Mandates Reform

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Service, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Authorship

The primary authors of this rule are Cynthia M. Perry and Keith A. Morehouse, U.S. Fish and Wildlife Service, and Barnett Rattner, Biological Research Division of the U.S. Geological Survey.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, the Service amends part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

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

Authority: 16 U.S.C. 703–712; and 16 U.S.C. 742 a–j.

2. Amend § 20.134 by revising paragraph (b) as set forth below and removing paragraph (c):

§ 20.134 Nontoxic shot.

* * * * *

(b) *Application and review.* Tiered Strategy for Approval of Nontoxic Shot and Shot Coating. (1) All applications for approval under this section must be submitted with supporting documentation to the Director in accordance with the following procedures and must include at a minimum the supporting materials and information covered by Tier 1 in the tiered approval system as follows:

(2) *Tier 1.* (i)(A) Applicant provides statements of use, chemical characterization, production variability, volume of use of candidate material and shot sample as listed in paragraphs (b)(2)(i)(A)(*1*) through (*5*), (b)(2)(i)(B)(*1*) through (*5*), and (b)(2)(i)(C)(*1*) through (*3*) of this section. The candidate shot or shot coating may be chemically analyzed by the Service or an independent laboratory to compare the results with the applicant's descriptions of shot composition and composition variability. Rejection of the application will occur if it is incomplete or if the composition of the candidate material, upon analysis, varies significantly from that described by the applicant.

(*1*) Statement of proposed use, i.e., purpose and types.

(*2*) Description of the chemical composition of the intact material.

(*i*) Chemical names, Chemical Abstracts Service numbers (if available), and structures.

(*ii*) Chemical characterization for organics and organometallics for coating and core [e.g., empirical formula, melting point, molecular weight, solubility, specific gravity, partition coefficients, hydrolysis half-life, leaching rate (in water and soil), degradation half-life, vapor pressure, stability and other relevant characteristics].

(*iii*) Composition and weight of shot material.

(*iv*) Thickness, quantity (e.g., mg/shot), and chemical composition of shot coating.

(*3*) Statement of the expected variability of shot during production.

(*4*) Estimate of yearly volume of candidate shot and/or coated shot expected for use in hunting migratory birds in the U.S.

(*5*) Five pounds of the candidate shot and/or coated shot, as applicable, in size equivalent to United States standard size No. 4 (0.13 inches in diameter).

(B) Applicant provides information on the toxicological effects of the shot or shot coating as follows:

(*1*) A summary of the acute and chronic mammalian toxicity data of the shot or shot coating ranking its toxicity (e.g., LD50<5 mg/kg = super toxic, 5–50 mg/kg = extremely toxic, 50–500 mg/kg = very toxic, 500–5,000 mg/kg = moderately toxic, 5,000–15,000 = slightly toxic, >15,000 mg/kg = practically nontoxic) with citations.

(*2*) A summary of known acute, chronic, and reproductive toxicological data of the chemicals comprising the shot or shot coating with respect to birds, particularly waterfowl (include LD50 or LC50 data, and sublethal effects) with citations.

(*3*) A narrative description, with citations to relevant data, predicting the toxic effect in waterfowl of complete erosion and absorption of one shot or coated shot in a 24-hour period. Define the nature of toxic effect (e.g., mortality, impaired reproduction, substantial weight loss, disorientation and other relevant associated clinical observations).

(*4*) A statement, with supporting rationale and citations to relevant data, that there is or is not any reasonable basis for concern for shot or coated shot ingestion by fish, amphibians, reptiles or mammals. If there is some recognized impact on fish, amphibians, reptiles, or mammals, the Service may require additional study.

(*5*) Summarize the toxicity data of chemicals comprising the shot or shot coating to aquatic and terrestrial invertebrates, fish, amphibians, reptiles, and mammals.

(C) Applicant provides information on the environmental fate and transport, if any, of the shot or shot coating as follows:

(*1*) A statement of the alteration of the shot or shot coating, chemically or physically, upon firing. The statement must describe any alterations.

(*2*) An estimate of the environmental half-life of the organic or organometallic component of the shot or shot coating, and a description of the chemical form of the breakdown products.

(*3*) Information on the Estimated Environmental Concentration (EEC) assuming 69,000 shot per hectare (Bellrose 1959; Pain 1990) for:

(*i*) A terrestrial ecosystem, assuming complete dissolution of material in 5 cm of soil. What would be the EEC and would that EEC exceed existing clean soil standards? (Environmental Protection Agency [EPA] standards for the Use of Disposal of Sewage Sludge; 40 CFR Part 503). How does the estimated EEC relate to the toxicity threshold for plants, invertebrates, fish and wildlife?

(*ii*) An aquatic ecosystem, assuming complete dissolution of the shot or shot coating in 1 cubic foot of water. What is the estimated EEC, and how does it compare to the EPA Water Quality Criteria and toxicity thresholds in plants, invertebrates, fish and wildlife?

(D) Service evaluation of an application.

(*1*) In reviewing the submission, the Service will use an exceedence of 1 LD50/square foot as the level of concern (U.S.E.P.A. 1992) as a criteria in the risk assessment.

(*2*) In cooperation with the applicant, the Service will conduct a risk assessment using the Quotient Method (Environmental Protection Agency 1986): Risk = EEC/Toxicological Level of Concern Compare EEC in ppm to an effect level (e.g., LD50 in ppm. If $Q < 0.1$ = No Adverse Effects; If $0.1 \leq Q \leq 10.0$ = Possible Adverse Effects; If $Q > 10.0$ = Probable Adverse Effects.

(*3*) Upon receipt of the Tier 1 application, the Director will review it to determine if the submission is complete. If complete, the applicant is notified within 30 days of receipt that a thorough review of the application will commence. A *Notice of Application* will appear in the **Federal Register** announcing the initiation of review of a Tier 1 application. Complete review of a Tier 1 application will occur within 60 days of the date the *Notice of Application* is published in the **Federal Register**.

(E) If, after review of the Tier 1 data, the Service does not conclude that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, the applicant is advised to proceed with the additional testing described for Tier 2, Tier 3, or both. A *Notice of Review* will inform the public that Tier 1 test results are inconclusive, and Tier 2, Tier 3, or both testing are required before further consideration.

(F) If review of the Tier 1 data results in a preliminary determination that the candidate material does not impose a significant danger to migratory birds, other wildlife, and their habitats, the Director will publish in the **Federal Register** a proposed rule stating the Service's intention to approve this shot or shot coating based on the toxicological report and toxicity studies. The rulemaking will include a description of the chemical composition of the candidate shot or shot coating, and a synopsis of findings under the standards required for Tier 1. If, at the end of the comment period, the Service finds no technical or scientific basis upon which to alter its conclusion, the candidate material will be approved by the publication of a final rule in the **Federal Register**. If, after receiving public comment, the Service determines that all available information does not establish that the shot and/or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, Tier 2, Tier 3, or both testing will be required and a *Notice of Review* will appear in the **Federal Register**. If only one of these two Tier tests are required, the Service will explain in the notice why the other is not required. If the applicant chooses not to proceed, the determination denying approval will appear in the **Federal Register**.

(ii) *Reserved*.

(3) *Tier 2*.

(i) If Tier 2 testing is required, the applicant must submit a plan that addresses paragraph (b)(3)(ii) requirements. The Director will review the Tier 2 testing plan submitted by the applicant within 30 days of receipt. The Director may decline to approve the plan, or any part of it, if deficient in any manner with regard to timing, format or content. The Director shall apprise the applicant regarding what parts, if any, of the submitted testing procedures to disregard and any modifications to incorporate into the Tier 2 testing plan in order to gain plan approval. All testing procedures will be in compliance with the Good Laboratory Practices Standards (40 CFR part 160) except where they conflict with the regulations in this section or with a provision of an approved plan. The Director, or authorized representative, may elect to inspect the applicant's laboratory facilities and may decline to approve the plan and further consideration of the candidate shot if the facility does not meet the Good Laboratory Practices Standards. After the plan is accepted, Tier 2 testing will commence. Required analyses and reports, in accordance with the regulations in this section, must be sent to the Director. The applicant will ensure that copies of all the raw data and statistical analyses accompany the

laboratory reports and final comprehensive report of this test.

(ii) Evaluation of the candidate shot or shot coating will first be in a standardized test under *in vitro* conditions (see paragraph (b)(3)(ii)(A)) that will assess its erosion and any release of components into a liquid medium in an environment simulating *in vivo* conditions of a waterfowl gizzard. Erosion characteristics are to be compared with those of lead shot and steel shot of comparable size. Following the erosion rate testing, the applicant must conduct a 30-day acute toxicity test in mallards, and a test to determine the candidate shot and/or shot coating effects on selected invertebrates and fish and include the results in the report for the Director.

(A) *In Vitro* Erosion Rate Test. Conduct a standardized *in vitro* test to determine erosion rate of the candidate shot or shot coating using the guidelines in Kimball and Munir (1971), unless otherwise provided by the Service.

(*1*) Typical test materials:

Atomic absorption spectrophotometer; Drilled aluminum block to support test tubes; Thermostatically controlled stirring hot plate; Small Teflon®-coated magnets; Hydrochloric acid (pH 2.0) and pepsin; Capped test tubes; and Lead, steel and candidate shot/coated shot.

(*2*) Typical test procedures. Add hydrochloric acid and pepsin to each capped test tube at a volume and concentration that will erode a single ι4 lead shot at a rate of 5 mg/day. Place three test tubes, each containing either lead shot, steel shot or candidate shot and/or coated shot, in an aluminum block on the stirring hot plate. Add a Teflon® coated magnet to each test tube and set the hot plate at 42 degrees centigrade and 500 revolutions per minute. Determine the erosion of shot or coated shot daily for 14 consecutive days by weighing the shot and analyzing the digestion solution with an atomic absorption spectrophotometer. Replicate the 14-day procedure five times.

(*3*) Typical test analyses. Compare erosion rates of the three types of shot by appropriate analysis of variance and regression procedures. The statistical analysis will determine whether the rate of erosion of the shot and/or shot coating is significantly greater or less than that of lead and steel. This determination is important to any subsequent toxicity testing.

(B) Acute Toxicity Test—Tier 2 (Short-term, 30-day acute toxicity test using a commercially available duck food.). Over a 30-day period, conduct a short-term acute toxicity test that complies with the guidelines described as follows or as otherwise provided by the Service:

(*1*) Typical test materials: 30 male and 30 female hand-reared mallards approximately 6 to 8 months old (mallards must have plumage and body conformation that resemble wild mallards); 60 elevated outdoor pens equipped with feeders and waterers; Laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies; Commercial duck maintenance mash; and Lead, steel and candidate shot.

(*2*) Typical test procedures. House mallards individually in pens and give *ad libitum* access to food and water. After 3 weeks, randomly assign to 3 groups (10 males and 10 females/group), dose with eight pellets of either No. 4 lead shot (positive control), steel shot (negative control), or the candidate shot or coated shot. Fluoroscope birds at 1 week after dosage to check for shot retention. Observe birds daily for signs of intoxication and mortality over a 30-day period. Determine body weight at the time of dosing, and at days 15 and 30 of the test. On days 15 and 30, collect blood by venipuncture, determine hematocrit, hemoglobin concentration and other specified blood chemistries. Sacrifice all survivors on day 30. Remove the liver and other appropriate organs from the sacrificed birds and from birds that died prior to sacrifice on day 30 for histopathological analysis. Analyze the organs for lead and compounds contained in the candidate shot or coated shot. Necropsy all birds to determine any pathological conditions.

(*3*) Typical test analyses. Analyze mortality among the specified groups with appropriate chi-square statistical procedures. Analyze physiological data and tissue contaminant data by analysis of variance or other appropriate statistical procedures to include the factors of shot type and sex. Compare sacrificed birds and birds that died prior to sacrifice whenever sample sizes are adequate for meaningful comparison.

(C) Daphnid and Fish Early-Life Toxicity Tests. Determine the toxicity of the compounds that comprise the shot or shot coating (at conditions maximizing solubility without adversely affecting controls) to selected invertebrates and fish. These methods are subject to the environmental effects test regulations developed under the authority of the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), as follows:

(*1*) The first test, the *Daphnid Acute Toxicity Test* (conducted in accordance with 40 CFR 797.1300), is a guideline for use in developing data on the acute toxicity of chemical substances. This guideline prescribes an acute toxicity test in which Daphnid exposure to a chemical in static and flow-through systems, with the agencies assessing the hazard the compound(s) may present to an aquatic environment.

(*2*) The second test is the *Daphnid Chronic Toxicity Test* (conducted in accordance with 40 CFR 797.1330). This gathers data on the chronic toxicity of chemical substances in which Daphnids (*Daphnia* spp.) are exposed to a chemical in a renewal or flow-through system. The data from this test are again used to assess the hazard that the compound(s) may present to an aquatic environment.

(*3*) A third test, *Fish Early Life Stage Toxicity Test* (conducted in accordance with 40 CFR Section 797.1600), assesses the adverse effects of chemical substances to fish in the early stages of their growth and development. Data from this test are used to determine the hazard the compound(s) may present to an aquatic environment.

(iii) After the Tier 2 testing, the applicant will report the results to the Director. If, after review of the Tier 2 data, the Service determines that the information does not establish that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, the applicant is advised to proceed with the additional testing in Tier 3. A *Notice of Review* advises the public that, in conjunction with Tier 1 data, Tier 2 test results are inconclusive and Tier 3 testing is required for continued consideration.

(iv) If review of the Tier 2 test data results in a preliminary determination that the candidate shot or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, the Director will publish in the **Federal Register** a proposed rule stating the Service's intention to approve this shot and/or coating and why Tier 3 testing is unnecessary. The rulemaking will include a description of chemical composition of the shot or shot coating, and a synopsis of findings under the standards required at Tier 2. If, at the end of the comment period, the Service finds no technical or scientific basis upon which to deny approval, the candidate shot or shot coating approval is published as a final rule in the **Federal Register**. If, as a result of the comment period, the Service determines that the information does not establish that the shot and/or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, Tier 3 testing will be required and a *Notice of Review* published in the

Federal Register. If the applicant chooses not to proceed, the determination denying approval of the candidate shot or shot coating will appear in the **Federal Register**.

(4) *Tier 3*.

(i) If the Director determines that the Tier 1 or Tier 2 information is inconclusive, the Director will notify the applicant to submit a Tier 3 testing plan for conducting further testing as outlined in paragraphs (b)(4)(i) (A) and (B) of this section. Review, by the Director, of the Tier 3 testing plan submitted by the applicant will occur within 30 days of receipt. The Director may decline to approve the plan, or any part of it, if deficient in any manner with regard to timing, format or content. The Director shall apprise the applicant regarding what parts, if any, of the submitted testing procedure to disregard and any modifications to incorporate into the Tier 3 plan in order to gain plan approval. All testing procedures should be in compliance with the Good Laboratory Practices Standards (40 CFR part 160), except where they conflict with the regulations in this section or with a provision of an approved plan. The Director, or authorized representative, may elect to inspect the applicant's laboratory facilities and may decline to approve the plan and further consideration of the candidate shot and/or shot coating if the facility is not in compliance with the Good Laboratory Practices Standards. After acceptance of the plan, Tier 3 testing will commence. Required analyses and reports must be sent to the Director. The applicant will ensure that copies of all the raw data and statistical analyses accompany the laboratory reports and final comprehensive report of this test.

(A) Chronic Toxicity Test—Tier 3 (Long-term toxicity test under depressed temperature conditions using a nutritionally-deficient diet). Conduct a chronic exposure test under adverse conditions that complies with the general guidelines described as follows unless otherwise provided by the Service:

(*1*) Typical test materials: 36 male and 36 female hand-reared mallards approximately 6 to 8 months old (Mallards must have plumage and body conformation that resembles wild mallards); 72 elevated outdoor pens equipped with feeders and waterers; Laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies; Whole kernel corn; and Lead, steel, and candidate shot or coated shot.

(*2*) Typical test procedures.

(*i*) Conduct this test at a location where the mean monthly low temperature during December through March is between 20 and 40 degrees Fahrenheit (−6.6 and 4.4 degrees centigrade, respectively). Assign individual mallards to elevated outdoor pens during the first week of December and acclimate to an *ad libitum* diet of whole kernel corn for 2 weeks. Randomly assign birds to 5 groups (lead group of 4 males and 4 females, 4 other groups of 8 males and 8 females/group). Dose the lead group (positive control) with one size No. 4 pellet of lead shot. Dose one group (8 males and 8 females) with eight size No. 4 pellets of steel shot (negative control) and dose the 3 other groups (8 males and 8 females/group) with one, four and eight size No. 4 pellets of candidate shot or coated shot.

(*ii*) Weigh and fluoroscope birds weekly. Weigh all recovered shot to measure erosion. Determine blood parameters given in the 30-day acute toxicity test. Provide body weight and blood parameter measurements on samples drawn at 24 hours after dosage and at the end of days 30 and 60. At the end of 60 days, sacrifice all survivors. Remove the liver and other appropriate organs from sacrificed birds and birds dying prior to sacrifice on day 60 for histopathological analysis. Analyze organs for lead and other metals potentially contained in the candidate shot or shot coating. Necropsy all birds that died prior to sacrifice to determine pathological conditions associated with death.

(*3*) Typical test analyses. Analyze mortality among the specified groups with appropriate chi-square statistical procedures. Any effects on the previously mentioned physiological parameters caused by the shot or shot coating must be significantly less than those caused by lead shot and must not be significantly greater than those caused by steel shot. Analyze physiological data and tissue contaminant data by analysis of variance or appropriate statistical procedures to include the factors of shot type, dose and sex. Compare sacrificed birds and birds that died prior to sacrifice whenever sample sizes are adequate for a meaningful comparison.

(B) Chronic Dosage Study—Tier 3 (Moderately long-term study that includes reproductive assessment). Conduct chronic exposure reproduction trial with the general guidelines described as follows unless otherwise provided by the Service:

(*1*) Typical test materials: 44 male and 44 female hand-reared first year mallards (Mallards must have plumage and body conformation that resemble wild mallards); Pens suitable for quarantine and acclimation and for reasonably holding 5–10 ducks each; 44 elevated, pens equipped with feeders, waterers and nest boxes; Laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies; Whole kernel corn, and commercial duck maintenance and breeder mash; and Lead, steel and candidate shot or coated shot.

(*2*) Typical test procedures. (*i*) Randomly assign mallards to 3 groups (Lead group = 4 males and 4 females; steel group = 20 males and 20 females; candidate shot/coated shot group = 20 males and 20 females) in December and hold in same-sex groups until mid-January (dates apply to outdoor test facility only and will reflect where in the U.S. tests are conducted). Tests conducted in the southern U.S. will need to be completed in low temperature units. After a 3-week acclimation period with ducks receiving commercial maintenance mash, provide birds with an *ad libitum* diet of corn for 60 days and then pair birds (one pair/pen) and provide commercial breeder mash. Dosing of the 3 groups with one pellet of No. 4 lead shot (positive control); eight pellets of No. 4 steel shot (negative control); and eight pellets of No. 4 candidate shot or coated shot will occur after the acclimation period (day 0) and redosed after 30, 60, and 90 days. Few, if any, of the lead-dosed birds (positive control) should survive and reproduce.

(*ii*) Fluoroscope birds 1 week after dosage to check for shot retention. Weigh males and females the day of initial dosing (day 0), at each subsequent dosing, and at death. Measure blood parameters identified in the 30-Day Acute Toxicity Test in this test using samples drawn at time of weighing. Note the date of first egg and the mean number of days per egg laid. Conclude laying after 21 normal, uncracked eggs are laid or after 150 days. Sacrifice adults after completion of laying period. Remove the liver and other appropriate organs from sacrificed birds and from other birds that died prior to sacrifice for histopathological analysis. Analyze organs and the 11th egg for compounds contained in the shot or shot coating. Necropsy all birds to determine any pathological conditions. Check nests daily to collect eggs. Discard any eggs laid before pairing. Artificially incubate eggs and calculate the percent shell thickness, percent eggs cracked, percent fertility (as determined by candling), and percent hatch of fertile eggs for each female. Provide ducklings with starter mash after hatching. Sacrifice all ducklings at 14 days of age. Measure survival to day 14 and weight of the

ducklings at hatching and sacrifice. Measure blood parameters identified in the 30-Day Acute Toxicity Test using samples drawn at sacrificing.

(*3*) Typical test analyses.

(*i*) Any mortality, reproductive inhibition or effects on the physiological parameters in paragraph (b)(4) by the shot or shot coating must not be significantly greater than those caused by steel shot. Percentage data is subject to an arcsine, square root transformation prior to statistical analyses. Physiological and reproductive data is analyzed by one-tailed *t*-tests (α=0.05), or other appropriate statistical procedures by the applicant.

(*ii*) After conclusion of Tier 3 testing, the applicant must report the results to the Director. If after review of the Tier 3 data (completion 60 days after receipt of material) the Service determines that all of the information gathered and submitted in accordance with Tiers 1, 2, and 3, as applicable, does not establish that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife, and their habitats, the applicant will have the option of repeating the tests that the Director deems are inconclusive. If the applicant chooses not to repeat the tests, approval of the candidate shot or shot coating is denied. A *Notice of Review* will inform the public that Tier 3 results are inconclusive, the applicant's decision not to repeat Tier 3 testing, and the Service's subsequent denial of the shot or shot coating.

(*iii*) If review of either the initial or repeated Tier 3 test data results in a preliminary determination that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife and their habitats, the Director will publish in the **Federal Register** a proposed rule stating the Service's intention to approve this shot or shot coating and providing the public with the opportunity to comment. The rulemaking will include a description of the chemical composition of the shot or shot coating and a synopsis of findings under the standards required by Tier 3. If at the end of the comment period, the Service concludes that the shot or shot coating does not impose a significant danger to migratory birds, other wildlife, or their habitats, the shot or shot coating will be approved as nontoxic with publication of a final rule in the **Federal Register**.

(5) *Residual lead levels.* The Service's maximum environmentally acceptable level of lead in shot is trace amounts or <1 percent. Any shot manufactured with lead levels equal to or exceeding 1 percent are considered toxic and, therefore, illegal.

(6) *Field Detection Device.* Before approval of any shot for use in migratory game bird hunting, a noninvasive field testing device must be available for enforcement officers to determine the shot material in a given shell in the field.

Dated: November 3, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–31328 Filed 11–28–97; 8:45 am]

BILLING CODE 4310–55–P

federal register

Monday
December 1, 1997

Part III

The President

Presidential Determination No. 98–5—Proposed Agreement for Cooperation Between the Government of the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy

Federal Register
Vol. 62, No. 230
Monday, December 1, 1997

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–5 of November 17, 1997

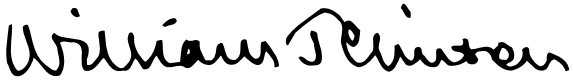
Presidential Determination on the Proposed Agreement for Cooperation Between the Government of the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement for Cooperation Between the Government of the United States of America and the Republic of Kazakhstan Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 17, 1997.

[FR Doc. 97–31666
Filed 11–28–97; 8:45 am]
Billing code 4710–01–M

federal register

Monday
December 1, 1997

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 39

Airworthiness Directives; Boeing Model 747 Series Airplanes; Final Rule

14 CFR Part 39

Airworthiness Directives; Boeing Model 747-100, -200, and -300 Series Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–271–AD; Amendment 39–10230; AD 97–25–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

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 747 series airplanes. This action requires disconnection of the electrical connector to the scavenge pump of the center wing tank.

This AD also requires a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new pump, if necessary. This amendment is prompted by findings from a design review and analysis of scavenge pumps installed on certain Boeing Model 747 series airplanes that was undertaken as part of an accident investigation. The actions specified in this AD are intended to prevent potential failures within the electrical motor assembly of the scavenge pump, which could result in leakage of fuel from the electrical connector into the main landing gear wheel well, or electrical arcing within the scavenge pump motor; these conditions could result in a fuel fire in the wheel well.

DATES: Effective December 16, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 16, 1997.

Comments for inclusion in the Rules Docket must be received on or before January 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97-NM–271-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the 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: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S; or G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S; FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864 or (425) 227–2689; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On July 17, 1996, a Boeing Model 747 series airplane was involved in an accident shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York. The National Transport Safety Board (NTSB) has not yet determined the cause of that accident. In support of the subsequent accident investigation, the FAA recently conducted an engineering design review and analysis on certain Lear Romec scavenge pumps. Results of inspections on scavenge pumps removed from the center wing fuel tank of older Boeing Model 747 series airplanes indicated degradation of certain silicone insulating grommet material in electrical connectors of the pump due to the incompatibility of this material with fuel.

Damage to the electrical connector, which is part of the electrical motor assembly of the scavenge pump, could cause potential failures within the electrical motor assembly of the scavenge pump. Such failures could result in leakage of fuel from the electrical connector into the main landing gear wheel well, or electrical arcing within the scavenge pump motor. These conditions could result in a fuel fire in the wheel well.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–28A2206, dated September 25, 1997, which describes procedures for disconnection of the electrical connector to the scavenge pump of the center wing tank. The alert service bulletin also describes procedures for a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new pump, if necessary.

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 747 series airplanes of the same type design, this AD is being issued to prevent potential failures within the electrical motor assembly of the scavenge pump, which could result in a fuel fire in the wheel well. This AD requires disconnection of the electrical connector to the scavenge pump of the center wing tank. This AD also requires a one-time inspection to identify the part number of the electrical connector; and replacement of the pump with a new pump, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin 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–271–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:

97–25–06 Boeing: Amendment 39–10230. Docket 97-NM–271-AD.

Applicability: Model 747 series airplanes having line positions 001 through 971 inclusive, 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 (c) 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 potential failures within the electrical motor assembly of the scavenge pump, which could result in a fuel fire in the wheel well, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Within 90 days after the effective date of this AD, disconnect the electrical connector to the scavenge pump of the center wing tank; and perform a one-time inspection of the pump to identify the part number of the electrical connector; in accordance with Boeing Alert Service Bulletin 747–28A2206, dated September 25, 1997.

(1) If an electrical connector having the correct part number (as specified in the alert service bulletin) is installed: Prior to further flight, reinstall the electrical connector. No further action is required by this AD.

(2) If an electrical connector having a part number other than the correct part number (as specified in the alert service bulletin) is installed: Prior to further flight, replace the scavenge pump with a new scavenge pump with an electrical connector having the correct part number (as specified in the alert service bulletin) in accordance with the Accomplishment Instructions of the alert service bulletin.

(b) If a scavenge pump with an electrical connector having the correct part number (as specified in Boeing Alert Service Bulletin 747–28A2206, dated September 25, 1997) is not available for installation: The airplane may be operated with the scavenge pump deactivated in accordance with the provisions and limitations specified in the FAA-approved Minimum Equipment List (MEL) and paragraph III.A.3. of the Accomplishment Instructions of the alert service bulletin.

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

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

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

(e) The actions required by this AD shall be done in accordance with Boeing Alert Service Bulletin 747–28A2206, dated September 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 16, 1997.

Issued in Renton, Washington, on November 26, 1997.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31667 Filed 11-28-97; 10:56 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, -200, and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 747–100, -200, and -300 series airplanes. This proposal would require the installation of components for the suppression of electrical transients and/or the installation of shielding and separation of the electrical wiring of the fuel quantity indication system (FQIS). This proposal is prompted by testing results, which revealed that excessive energy levels in the electrical wiring and probes of the fuel system could be induced by electrical transients. The actions specified by the proposed AD are intended to prevent electrical transients induced by electromagnetic interference (EMI) or electrical short circuit conditions from causing arcing of the FQIS electrical wiring or probes in the fuel tank, which could result in a source of ignition in the fuel tank.

DATES: Comments must be received by March 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information concerning this proposal may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97-NM–272-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 17, 1996, a Boeing Model 747 series airplane was involved in an accident shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York. In support of the subsequent accident investigation, the FAA participated in testing of the fuel quantity indication system (FQIS). Results of that testing revealed that excessive energy could be induced by high transient voltage levels in the electrical wiring and probes of the fuel system. These excessive levels occurred when the wiring of the FQIS was subjected to electrical transient testing. These electrical transients may be caused in the airplane when switching electrical loads in the wiring adjacent to the FQIS wiring.

The FQIS was tested to determine its performance in accordance with airplane electromagnetic interference (EMI) requirements. In this test, conductive debris, such as steel wool and lockwire, was used to bridge the FQIS probes to simulate debris that has been found during inspections of transport category airplanes. Results of this test indicated that transient voltage levels induced in the FQIS wiring and probes could be in excess of 800 volts, and the resulting energy levels in the FQIS wiring and probes could be greater than the energy required to ignite fuel vapor inside a fuel tank.

In addition, recent inspections of the fuel probe wiring in Model 747 fuel tanks revealed damaged wiring insulation, which exposed the conductors inside the fuel tank. This condition, together with the introduction of induced transients or short circuit conditions, increases the likelihood for potential ignition sources in the fuel tank.

The conditions described above, if not corrected, could result in excessive levels of energy in the FQIS wiring and a consequent potential source of ignition in the fuel tank.

FAA's Conclusions

While none of the above conditions have been identified at this time as the cause of the accident discussed previously, the FAA concludes that results of the tests and inspections that have been performed indicate that modifications are required to limit the energy level induced in the FQIS wiring and probes. Further, the FAA has determined that shielding and separation of the FQIS electrical wiring from adjacent wiring is necessary to provide protection from wire-to-wire electrical short circuit conditions, which are a potential source of ignition in the fuel tank.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the installation of components for the suppression of electrical transients and/or the installation of shielding and separation of the electrical wiring of the FQIS. The actions would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 650 Model 747–100, -200, and -300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 167

airplanes of U.S. registry would be affected by this proposed AD.

Since the manufacturer has not yet developed a modification commensurate with the requirements of this proposal, the FAA is unable at this time to provide specific information as to the number of work hours or the cost of parts that would be required to accomplish the proposed modification. A further problem in developing a specific cost estimate is the fact that modification costs are expected to vary from operator to operator and from airplane to airplane depending upon airplane configuration. The proposed compliance time of 12 months should provide ample time for the development, approval, and installation of an appropriate modification.

However, based on similar modifications accomplished previously on other airplane models, the FAA can reasonably estimate that the proposed modification would require 40 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts is estimated to be $10,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,070,800, or $12,400 per airplane.

As indicated earlier in this preamble, the FAA specifically invites the submission of comments and other data regarding this economic aspect of proposal.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 97-NM–272-AD.

Applicability: All Model 747–100, -200, and -300 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 electrical transients induced by electromagnetic interference (EMI) or electrical short circuit conditions from causing arcing of the fuel quantity indication system (FQIS) electrical wiring or probes in the fuel tank, which could result in a source of ignition in the fuel tank, accomplish the following:

(a) Within 12 months after the effective date of this AD, install components for the suppression of electrical transients and/or install shielding and separation of the wiring of the FQIS, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

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

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

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

Issued in Renton, Washington, on November 26, 1997.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–31668 Filed 11-28-97; 10:56 am]

BILLING CODE 4910–13–U

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Federal Register

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626..... 1

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 1, 1997

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Canning and processing bean endorsement; published 10-30-97

COMMERCE DEPARTMENT

Patent and Trademark Office

Patents:
- Practice rules; simplification, clarification, and removal of unnecessary requirements; published 10-10-97
  - Correction; published 11-17-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- Arizona; published 12-1-97

Hazardous waste:
- Identification and listing—
  - Exclusions; published 12-1-97

FEDERAL COMMUNICATIONS COMMISSION

Radio broadcasting:
- Broadcast transmission facilities; minor changes without construction permit; published 9-30-97

Radio frequency devices:
- Biomedical telemetry transmitters; published 10-30-97

FEDERAL MARITIME COMMISSION

Tariffs and service contracts:
- Contract filing requirements; simplification; published 12-1-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:
- HOME investment partnerships program
  - Indian HOME program streamlining; published 10-31-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Grant and Cooperative Agreement Handbook, Section A; miscellaneous revisions; published 12-1-97

PENSION BENEFIT GUARANTY CORPORATION

Single-employer plans:
- Allocation of assets—
  - Interest assumptions for valuing benefits; published 11-14-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Avions Pierre Robin; published 11-7-97
- Fairchild; published 11-3-97
- Pilatus Aircraft Ltd.; published 11-6-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
- Hydraulic brake systems—
  - Passenger car and light vehicle brake systems; published 9-30-97

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rail carriers:
- General purpose costing system; procedures modification; published 10-1-97

VETERANS AFFAIRS DEPARTMENT

Loan guaranty:
- Refinancing loans; interest rate reduction requirements; published 12-1-97

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AGRICULTURE DEPARTMENT

Acquisition regulations:
- Alternative agricultural research and commercialization corporation; set-asides and preferences for products; comments due by 12-5-97; published 10-6-97

COMMERCE DEPARTMENT

International Trade Administration

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- Allocation of duty exemptions—
  - Virgin Islands, Guam, American Samoa, and Northern Mariana Islands; comments due by 12-5-97; published 11-5-97

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National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic highly migratory species—
  - Meetings; comments due by 12-1-97; published 10-17-97
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 12-4-97; published 11-19-97

COMMODITY FUTURES TRADING COMMISSION

Commodity option transactions:
- Enumerated agricultural commodities; trade options; comments due by 12-4-97; published 11-4-97

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- Employment prohibition on persons convicted of fraud or other DOD contract-related felonies; comments due by 12-1-97; published 10-2-97

DEFENSE DEPARTMENT

Defense Special Weapons Agency

Privacy Act; implementation; comments due by 12-1-97; published 10-3-97

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Water heaters—
  - Test procedures; comments due by 12-1-97; published 10-31-97

ENERGY DEPARTMENT

Hearings and Appeals Office, Energy Department

Hearings and appeals procedures:
- Stay of decisions
  - Comment period extended; comments due by 12-2-97; published 10-3-97

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Air pollutants, hazardous; national emission standards:
- Polyether polyols production; comments due by 12-3-97; published 11-12-97

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- Ambient air quality standards, national—
  - Regional haze standards for class I Federal areas (large national parks and wilderness areas); visibility protection; comments due by 12-5-97; published 10-23-97
- Ambient air quality surveillance—
  - Lead ambient air quality monitoring; shift of focus from mobile sources to stationary point sources; comments due by 12-5-97; published 11-5-97
  - Lead ambient air quality monitoring; shift of focus from mobile sources to stationary point sources; comments due by 12-5-97; published 11-5-97

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- California; comments due by 12-3-97; published 11-3-97

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- Texas; comments due by 12-1-97; published 10-6-97

Hazardous waste:
- Project XL program; site-specific projects—
  - Molex, Inc., facility, Lincoln, NE; comments due by 12-3-97; published 11-3-97
  - Molex, Inc., facility, Lincoln, NE; comments due by 12-3-97; published 11-3-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- 2-propene-1-sulfonic acid, sodium salt, polymer with ethenol and ethenyl acetate, etc.; comments due by 12-1-97; published 10-1-97
- Carfentrazone-ethyl; comments due by 12-1-97; published 9-30-97

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- Testing requirements—
  - Biphenyl, etc.; comments due by 12-1-97; published 9-26-97

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Commercial mobile radio services—
Calling party pays service option; comments due by 12-1-97; published 10-30-97
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Mobile satellite services—
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New Hampshire; comments due by 12-1-97; published 10-22-97

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Net quantity of contents; compliance; comments due by 12-1-97; published 10-6-97
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Outer Continental Shelf; oil, gas, and sulphur operations:
Oil and gas pipelines; designated locations where operating responsibility is transferred from producing operator to transporting operator; comments due by 12-1-97; published 10-2-97

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Drug Enforcement Administration

Records, reports, and exports of listed chemicals:
Iodine and hydrochloric gas (hydrogen chloride gas); comments due by 12-1-97; published 9-30-97

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Deportation suspension, removal cancellation, and status adjustment cases; comments due by 12-1-97; published 10-3-97
Aliens—
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Visa waiver pilot program—
Slovenia and Ireland; comments due by 12-1-97; published 9-30-97

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Executive Office for Immigration Review:
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TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules:
Aircraft operator security; comments due by 12-1-97; published 8-1-97
Airport security; comments due by 12-1-97; published 8-1-97
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Class E airspace; comments due by 12-1-97; published 10-17-97

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Federal Transit Administration

Prohibited drug use and alcohol misuse prevention in transit operations:
Post-accident drug and alcohol test results taken by State and local law enforcement personnel; use by employers; comments due by 12-1-97; published 9-30-97

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Thrift Supervision Office

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Electronic operations; banking services delivered electronically; comments due by 12-2-97; published 10-3-97

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

In the List of Public Laws printed in the **Federal Register** on November 25, 1997, Public Laws 105–104 and 105–105 were incorrectly printed. They should read as follows:

H.J. Res. 91/P.L. 105–104

Granting the consent of Congress to the Apalachicola-Chattahoochee-Flint River Basin Compact. (Nov. 20, 1997; 111 Stat. 2219)

H.J. Res. 92/P.L. 105–105

Granting the consent of Congress to the Alabama-Coosa-Tallapoosa River Basin Compact. (Nov. 20, 1997; 111 Stat. 2233)

Last List November 26, 1997

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
●**1, 2 (2** Reserved)	(869–032–00001–8)	$5.00	Feb. 1, 1997
●**3** (1996 Compilation and Parts 100 and 101)	(869–032–00002–6)	20.00	[1] Jan. 1, 1997
●**4**	(869–032–00003–4)	7.00	Jan. 1, 1997
5 Parts:			
●1–699	(869–032–00004–2)	34.00	Jan. 1, 1997
●700–1199	(869–032–00005–1)	26.00	Jan. 1, 1997
●1200–End, 6 (6 Reserved)	(869–032–00006–9)	33.00	Jan. 1, 1997
7 Parts:			
●0–26	(869–032–00007–7)	26.00	Jan. 1, 1997
●27–52	(869–032–00008–5)	30.00	Jan. 1, 1997
●53–209	(869–032–00009–3)	22.00	Jan. 1, 1997
●210–299	(869–032–00010–7)	44.00	Jan. 1, 1997
●300–399	(869–032–00011–5)	22.00	Jan. 1, 1997
●400–699	(869–032–00012–3)	28.00	Jan. 1, 1997
●700–899	(869–032–00013–1)	31.00	Jan. 1, 1997
●900–999	(869–032–00014–0)	40.00	Jan. 1, 1997
●1000–1199	(869–032–00015–8)	45.00	Jan. 1, 1997
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●1500–1899	(869–032–00017–4)	53.00	Jan. 1, 1997
●1900–1939	(869–032–00018–2)	19.00	Jan. 1, 1997
●1940–1949	(869–032–00019–1)	40.00	Jan. 1, 1997
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●81–85	(869–032–00143–0)	32.00	July 1, 1997
86	(869–032–00144–8)	50.00	July 1, 1997
●87-135	(869–032–00145–6)	40.00	July 1, 1997
●136–149	(869–032–00146–4)	35.00	July 1, 1997
●150–189	(869–032–00147–2)	32.00	July 1, 1997
●190–259	(869–032–00148–1)	22.00	July 1, 1997
●260–265	(869–032–00149–9)	29.00	July 1, 1997
●266–299	(869–032–00150–2)	24.00	July 1, 1997
●300–399	(869–032–00151–1)	27.00	July 1, 1997
●400–424	(869–032–00152–9)	33.00	[6] July 1, 1996
●425–699	(869–032–00153–7)	40.00	July 1, 1997
●700–789	(869–032–00154–5)	38.00	July 1, 1997
●790–End	(869–032–00155–3)	19.00	July 1, 1997
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
●1–100	(869–032–00156–1)	14.00	July 1, 1997
101	(869–032–00157–0)	36.00	July 1, 1997
●102–200	(869–032–00158–8)	17.00	July 1, 1997
201–End	(869–032–00159–6)	15.00	July 1, 1997
42 Parts:			
●1–399	(869–028–00163–7)	32.00	Oct. 1, 1996
●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
●430–End	(869–028–00165–3)	44.00	Oct. 1, 1996
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
●1000–end	(869–028–00167–0)	45.00	Oct. 1, 1996
●44	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
●200–499	(869–028–00170–0)	14.00	[5] Oct. 1, 1995
*●500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
●1200–End	(869–028–00172–6)	36.00	Oct. 1, 1996
46 Parts:			
●1–40	(869–028–00173–4)	26.00	Oct. 1, 1996
●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
●90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
●156–165	(869–028–00178–5)	20.00	Oct. 1, 1996
●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
*●200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
*500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
●0–19	(869–028–00182–3)	35.00	Oct. 1, 1996
●20–39	(869–028–00183–1)	26.00	Oct. 1, 1996
●40–69	(869–028–00184–0)	18.00	Oct. 1, 1996
●70–79	(869–028–00185–8)	33.00	Oct. 1, 1996
●80–End	(869–028–00186–6)	39.00	Oct. 1, 1996
48 Chapters:			
●1 (Parts 1–51)	(869–028–00187–4)	45.00	Oct. 1, 1996
●1 (Parts 52–99)	(869–028–00188–2)	29.00	Oct. 1, 1996
●2 (Parts 201–251)	(869–028–00189–1)	22.00	Oct. 1, 1996
●2 (Parts 252–299)	(869–028–00190–4)	16.00	Oct. 1, 1996
●3–6	(869–028–00191–2)	30.00	Oct. 1, 1996
●7–14	(869–028–00192–1)	29.00	Oct. 1, 1996
●15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
●29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
●1–99	(869–028–00195–5)	32.00	Oct. 1, 1996
●100–185	(869–028–00196–3)	50.00	Oct. 1, 1996
*186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
●200–399	(869–028–00198–0)	39.00	Oct. 1, 1996
●400–999	(869–028–00199–8)	49.00	Oct. 1, 1996
●1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996
50 Parts:			
●1–199	(869–028–00202–1)	34.00	Oct. 1, 1996
●200–599	(869–028–00203–0)	22.00	Oct. 1, 1996
●600–End	(869–028–00204–8)	26.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–032–00047–6)	45.00	Jan. 1, 1997
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Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
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Complete set (one-time mailing)		264.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 1997

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
December 1	December 16	December 31	January 15	January 30	March 3
December 2	December 17	January 2	January 16	February 2	March 2
December 3	December 18	January 2	January 20	February 2	March 3
December 4	December 19	January 5	January 20	February 2	March 4
December 5	December 22	January 5	January 20	February 3	March 5
December 8	December 23	January 7	January 22	February 6	March 9
December 9	December 24	January 8	January 23	February 9	March 9
December 10	December 29	January 9	January 26	February 9	March 10
December 11	December 29	January 12	January 26	February 9	March 11
December 12	December 29	January 12	January 26	February 10	March 12
December 15	December 30	January 14	January 29	February 13	March 16
December 16	December 31	January 15	January 30	February 17	March 16
December 17	January 2	January 16	February 2	February 17	March 17
December 18	January 2	January 20	February 2	February 17	March 18
December 19	January 5	January 20	February 2	February 17	March 19
December 22	January 6	January 21	February 5	February 20	March 23
December 23	January 7	January 22	February 6	February 23	March 23
December 24	January 8	January 23	February 9	February 23	March 24
December 29	January 13	January 28	February 12	February 27	March 30
December 30	January 14	January 29	February 13	March 2	March 30
December 31	January 15	January 30	February 17	March 2	March 31