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Thursday
December 4, 1997

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Presidential Documents

Title 3—

The President

Proclamation 7057 of December 1, 1997

National Drunk And Drugged Driving Prevention Month, 1997

By the President of the United States of America

A Proclamation

Driving is a privilege enjoyed by millions of Americans. It offers us freedom, mobility, and the chance to discover what lies over the next hill or around the next bend in the road. But driving also brings with it serious responsibilities. Among the most important of these is a driver's responsibility to stay sober. Tragically, many Americans ignore this responsibility.

Drunk or drugged drivers are a menace not only to themselves, but also to the communities in which they drive. Last year alone, they killed more than 17,000 of their fellow citizens and injured thousands more. Research has shown that teenage drivers and those aged 21 to 34 are most likely to drive under the influence of alcohol or other drugs.

We must reaffirm our commitment to educate these and all drivers about the dangers of operating a vehicle after consuming alcohol or drugs, and we must strengthen law enforcement efforts that will prevent impaired drivers from getting behind the wheel in the first place. We must also work together as a national community to make drunk and drugged driving socially unacceptable, and continue to support educational programs and legislation that teach all our citizens the terrible risks of drunk and drugged driving. By doing so, we can prevent thousands of deaths and injuries each year and protect our families, our friends, and ourselves from becoming victims of this deadly behavior.

I am proud of the ''Zero Alcohol Tolerance'' legislation that 45 States and the District of Columbia have adopted, making it illegal for drivers under the age of 21 who have been drinking to drive a motor vehicle. I call upon all Americans, including policymakers, community leaders, State officials, parents, educators, health and medical professionals, and other concerned citizens to continue to support such legislation and to work together to save lives. I challenge American businesses to take a stand against impaired driving both on and off the job and to remember that an alcohol- and drug-free workplace is the right and responsibility of every worker. Finally, in memory of the thousands who have lost their lives to drunk and drugged drivers, I ask all motorists to participate in ''National Lights on for Life Day'' on Friday, December 19, 1997, by driving with vehicle headlights illuminated. In doing so, we will call attention to this critical national problem and remind others on the road of their responsibility to drive free of the influence of drugs and alcohol.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 1997 as National Drunk and Drugged Driving Prevention Month. I urge all Americans to recognize the dangers of impaired driving; to take responsibility for themselves and others around them; to prevent anyone under the influence of alcohol or drugs from getting behind the wheel; and to help teach our young people about the importance and the benefits of safe driving behavior.

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

William J. Clinton

[FR Doc. 97–31946
Filed 12–3–97; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–038–3]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, two interim rules that amended the gypsy moth quarantine and regulations by adding Wisconsin to the list of States quarantined because of gypsy moth and by adding areas in Ohio, Virginia, West Virginia, and Wisconsin to the list of generally infested areas. These changes affect eight areas in Ohio, eight areas in Virginia, six areas in West Virginia, and four areas in Wisconsin. The interim rules were necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of gypsy moth.

EFFECTIVE DATE: Affirmation effective December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, suite 4C10, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247, or e-mail cohern@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

We recently published two interim rules amending the gypsy moth quarantine and regulations. In the first interim rule, effective and published in the **Federal Register** on May 30, 1997 (62 FR 29286–29287, Docket No. 97–038–1), we amended § 301.45(a) of the regulations by adding Wisconsin to the list of States quarantined because of gypsy moth. We also amended § 301.45–3(a) of the regulations, which lists generally infested areas, by adding Guernsey and Ottawa Counties in Ohio; Appomattox, Brunswick, Campbell, Charlotte, Halifax, Lunenburg, Mecklenburg, and Pittsylvania Counties in Virginia; Webster County in West Virginia; and Brown, Door, Kewaunee, and Manitowoc Counties in Wisconsin to the list of generally infested areas.

In the second interim rule, effective and published in the **Federal Register** on July 9, 1997 (62 FR 36645–36646, Docket No. 97–038–2), we amended § 301.45–3(a) of the regulations by adding Belmont, Coshocton, Harrison, Holmes, Monroe, and Tuscarawas Counties in Ohio; and Doddridge, Harrison, Lewis, Tyler, and Upshur Counties in West Virginia to the list of generally infested areas.

These actions were necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of gypsy moth.

Comments on the first interim rule (Docket No. 97–038–1) were required to be received on or before July 29, 1997. Comments on the second interim rule (Docket No. 97–038–2) were required to be received on or before September 8, 1997. We did not receive any comments on either interim rule. The facts presented in the interim rules still provide a basis for the rules.

This action also affirms the information contained in the interim rules concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This action affects the interstate movement of regulated articles and outdoor household articles from and through gypsy moth regulated areas in Ohio, Virginia, West Virginia, and Wisconsin. There are several types of restrictions that apply to these newly quarantined areas in these States. These restrictions will have their primary impact on persons moving outdoor household articles, nursery stock, logs and wood chips, and mobile homes interstate from a generally infested area to any area that is not generally infested.

Under the regulations, outdoor household articles (OHA) may not be moved interstate from a generally infested area unless they are accompanied by either a certificate issued by an inspector or an OHA document issued by the owner of the articles, attesting to the absence of any life stage of the gypsy moth. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and issue an OHA document. This takes a few minutes and involves no monetary cost. Individuals may also have State certified pesticide applicators, trained by the State or U.S. Department of Agriculture (USDA), inspect and issue certificates.

With two exceptions, regulated articles (for example, logs, pulpwood, and wood chips; mobile homes; and nursery stock) may not be moved interstate from a generally infested area to any area that is not generally infested unless they are accompanied by a certificate or limited permit issued by an inspector. The first exception is that a regulated article may be moved from a generally infested area without a certificate if it is moved by the USDA for experimental or scientific purposes and is accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service. The second exception is that logs, pulpwood, and wood chips may be moved without a certificate or limited permit if the person moving the articles attaches a statement to the waybill stating that he or she has inspected the articles and has found them free of any lifestage of the gypsy moth. This exception minimizes costs with regard to logs, pulpwood, and wood chips.

Persons moving mobile homes and nursery stock interstate from a generally infested area to any area that is not generally infested may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. Documents self-issued under a compliance agreement avoid these delay costs but result in costs associated with salary and recordkeeping for the self-inspections.

When inspection of regulated articles or outdoor household articles reveals gypsy moth, treatment is often necessary. Treatment is done by qualified certified applicators, which are private businesses that charge, on the average, $50 to $100 to treat a shipment of articles. Most qualified certified applicators are small businesses. By declaring an area as a generally infested area, the regulations may increase business for qualified certified applicators located in generally infested areas. It is estimated that these businesses will average $50 to $150 per month in additional income per business. A few of the newly quarantined counties contain large urban areas that may have several hundred shipments annually containing outdoor household articles that will require inspection to move interstate from the generally infested area. Thus, there will likely be a need to train additional qualified certified applicators in those areas.

Entities in the newly quarantined areas that will incur the most costs from the interim rules will be establishments moving trees or shrubs with roots, such as nurseries. We estimate that approximately 60 such establishments move approximately 165 shipments of trees and shrubs each year from the newly quarantined areas. All of these establishments are believed to be small entities. These establishments will need to be inspected, either by an inspector or through self-inspection under a compliance agreement. If the inspection reveals signs of gypsy moth, the establishment will have to be treated in order to ship regulated articles outside the generally infested area. We estimate that annually, approximately 5 of these establishments will require treatment, and that the average area to be treated will be 20 acres. At an average treatment cost of $10 to $20 per acre, the average total annual cost to each establishment would be $200 to $400.

The Christmas tree industry and establishments that sell other forest products and that move their products interstate will also bear direct costs from the interim rules. There are approximately 689 farms that sell forest products and Christmas trees in the newly quarantined areas. These account for 9.4 percent of the total number of such farms in Ohio, Virginia, West Virginia, and Wisconsin. All of these establishments are believed to be small entities. Services of an inspector will be available without charge to inspect these farms and issue certificates and permits. We estimate that less than four percent of all these farms will be found to contain gypsy moth and, therefore, require treatment in order to ship trees. It is expected that, in most cases, Christmas tree farms will be free of gypsy moth and Christmas tree growers will meet the requirements for certification by having inspectors certify that the tree farms are free from gypsy moth. This alternative is less costly than inspecting or treating each individual shipment of trees and will thus minimize the economic impact of the change to the regulations for the newly quarantined areas.

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

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, two interim rules that amended 7 CFR part 301 and that were published at 62 FR 29286–29287 on May 30, 1997, and 62 FR 36645–36646 on July 9, 1997.

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

Done in Washington, DC, this 26th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31755 Filed 12–3–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 97–108–1]

Brucellosis in Cattle; State and Area Classifications; Arkansas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Arkansas from Class A to Class Free. We have determined that Arkansas meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Arkansas.

DATES: Interim rule effective on December 3, 1997. Consideration will be given only to comments received on or before February 2, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–108–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–108–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during

12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Arkansas was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Arkansas, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Arkansas from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Arkansas.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Arkansas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective on December 3, 1997. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Arkansas from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Arkansas, as well as buyers and importers of cattle from this State.

There are an estimated 32,553 cattle herds in Arkansas that would be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $3 per head.

Therefore, we believe that changing the brucellosis status of Arkansas will not have a significant economic impact on the small entities affected by this interim rule.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding ''Arkansas,'' immediately after ''Arizona,'' and paragraph (b) is amended by removing ''Arkansas,''.

Done in Washington, DC, this 26th day of November 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–31756 Filed 12–3–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 97–23]

RIN 1557–AB41

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), in order to more accurately reflect the OCC's costs of

supervising banks, is amending its assessment regulation to impose a surcharge on banks that receive a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System (UFIRS) (also referred to as the CAMELS rating) and on Federal branches and agencies of foreign banks that receive a rating of 3, 4, or 5 under the ROCA rating system (which rates risk management, operational controls, compliance, and asset quality). This amendment will enable the OCC to distribute more equitably the costs it incurs when supervising institutions that are experiencing significant problems. The OCC also is eliminating the annual franchise fee on banks that are registered as municipal and/or government securities dealers.

EFFECTIVE DATE: December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Madsen, Deputy Chief Financial Officer, Financial Review, Policy and Analysis, (202) 874–5130; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC charters, regulates, and supervises approximately 2,700 national banks and 64 Federal branches and agencies of foreign banks in the United States, accounting for nearly 60 percent of the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States. The OCC funds the activities that further this mission by imposing assessments, fees, and other charges on banks within its jurisdiction, as necessary and appropriate to meet the OCC's expenses, pursuant to 12 U.S.C. 482.

The OCC charges each national bank and Federal branch and agency a semiannual assessment according to a formula that is described in 12 CFR 8.2. In general, the OCC calculates the semiannual assessment by using a marginal rate that declines as an institution's asset size grows. The OCC also reduces assessments charged to a ''non-lead bank'' (which, generally speaking, refers to a national bank that is not the largest national bank owned by the same company) by a percentage determined in accordance with each assessment. For example, the OCC reduced the assessment for non-lead national banks that was due January 31, 1997, by 12 percent.

The marginal rate structure (which applies a declining marginal rate as bank asset size grows) and the assessment reduction for non-lead national banks reflect the OCC's cost savings resulting from the economies of scale realized in the examination and supervision of large institutions and non-lead banks. However, the current assessment regulation does not reflect the *increased* costs that the OCC incurs when supervising a bank whose condition requires special attention. As a result, healthy banks subsidize banks that are experiencing significant problems. The imposition of a surcharge on banks requiring additional OCC resources, discussed in the section that follows, addresses this concern.

Discussion of the Final Rule

Surcharge

In the proposed rule (62 FR 54747 (October 21, 1997)), the OCC sought comment on the addition of new paragraphs (a)(7) and (b)(5) to § 8.2, pursuant to which the OCC would impose a surcharge equal to 25 percent of the amount of the assessment that otherwise would be due from (a) national banks that receive a UFIRS rating of 3, 4, or 5 and (b) Federal branches and agencies of foreign banks that receive a ROCA rating of 3, 4, or 5. This proposal stemmed from OCC cost data, which show that there is a significant increase in supervision costs once an institution's rating moves from 2 to 3 and that these increased costs continue while the bank is rated 3, 4, or 5. To reflect this increase in costs of supervising a bank rated 3 or worse, the OCC proposed to use a UFIRS or ROCA rating (as appropriate) of 3 as the threshold for applying the surcharge. Using the most recently available data, the surcharge would affect approximately 94 national banks and Federal branches and agencies of foreign banks, resulting in an aggregate annual increase in assessments for these banks of approximately $983,000.

The OCC received three comments on the proposal, all of which were generally supportive of imposing the surcharge. The first commenter acknowledged that banks rated a 3, 4, or 5 require greater supervisory attention and concluded that the fee structure should reflect this. This commenter observed, however, that the surcharge might worsen the financial condition of institutions having to pay the surcharge. The second commenter, while supporting the imposition of a surcharge, suggested that the OCC (a) raise the surcharge for all banks rated a 3, 4, or 5 to some percentage higher than 25%, (b) increase the amount of the surcharge the worse a bank's condition becomes, and (c) charge banks a higher assessment the longer they fail to improve their condition. The third commenter agreed that banks rated a 3, 4, or 5 should pay a surcharge, but suggested that the OCC adopt a sliding scale that would impose a higher surcharge the worse a bank's rating became. This commenter also suggested that the OCC consider charging banks by the hour for examinations, but then noted that such an approach would raise the possibility of disputes over the number and qualifications of examiners used and the length of examinations.

The OCC believes, based on available cost data, that a 25% surcharge is an appropriate step toward minimizing the extent to which healthy banks subsidize banks requiring additional supervision without having counterproductive results. The data do not at this point support increasing the assessment surcharge in the other ways proposed by the commenters. Accordingly, the OCC, acting pursuant to 12 U.S.C. 482, adopts the proposed surcharge without change. The OCC will continue to review its cost data and make further adjustments to the assessment calculation as appropriate.

The OCC will use the date of the most recent Report of Examination to determine whether a surcharge should be imposed. If a bank is rated 3, 4, or 5 in the most recent exam report that is dated before the end of the relevant assessment period, a surcharge will be applied. Thus, for instance, if a bank is downgraded from a 2 to a 3 and receives this rating in an exam report dated on or before December 31, that bank would have to pay the surcharge with the assessment that is due by the following January 31. If, however, the exam report is dated January 1, in this example the bank would not have to pay the surcharge with the payment due the following January 31 but would have to pay the surcharge with all subsequent assessments until it is upgraded.

Assessments of a Bank That Owns Another Bank

In the preamble to the proposed rule, the OCC sought comment on the proper method of calculating the assessments of national banks that own other banks. This issue stems from a recent change in the Consolidated Report of Condition and Income (Call Report) instructions [1] pursuant to which the assets of a subsidiary bank are reported on a consolidated basis in the Call Report of its parent bank. Given that the subsidiary bank also must file a Call Report, the current assessment regulation, which bases assessments on

[1] See 62 FR 8078 (February 21, 1997).

assets reported in a bank's Call Report, has the unintended effect of double-counting at least some of the assets of the subsidiary bank.

The OCC received two comments on this issue. Both commenters suggested that subsidiary bank assets be subtracted from consolidated parent bank assets in determining the supervisory assessment base for the parent bank. The OCC agrees that it is appropriate to subtract the assets of the subsidiary bank for purposes of calculating the assessment of the parent bank. However, given the small number of banks that own other banks and the wide divergence in circumstances of these banks, the OCC has determined that it is appropriate to address this situation on a case-by-case basis instead of adopting a regulation that attempts to cover all situations. In order to ensure that these banks are assessed fairly, the OCC will inform the affected institutions in each semiannual assessment notice that they may submit information to the OCC demonstrating what the appropriate adjustment should be to the top-tier bank's total assets. The OCC then will review the information and adjust the assessment accordingly.

Removal of Annual Franchise Fees (§ 8.15)

The OCC also is removing § 8.15 from the current rule, which states that national banks that are registered or on file as municipal and/or government securities dealers shall pay an annual franchise fee covering each dealer activity. National banks engage in a wide variety of activities requiring an equally wide variety of supervisory activities. Rather than impose special fees on a few activities or, conversely, attempt to segregate and define all different types of supervisory activities and costs, the OCC has determined that it is more efficient and simpler for the industry for the OCC to recover its costs by imposing only one fee, namely, the semiannual assessment. Thus, the special fee charged to those banks that are registered as municipal and government securities dealers will be removed.

Adoption of Final Rule Removing Annual Franchise Fees

The OCC has determined that notice and comment is not required before removing § 8.15. The rule involves agency practice and procedure and thus is exempt under 5 U.S.C. 553(b)(A) from the prior notice requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). The determination of how fees are imposed is internal to the OCC, since the Comptroller is required by 12 U.S.C. 482 to recover expenses but is not required to follow specific calculations or formulae when making this determination. As a result, the OCC may revise its assessment structure as necessary to meet its expenses. In addition, the rule is exempt pursuant to 5 U.S.C. 553(b)(B) from the prior notice requirements because delaying adoption of the final rule pending receipt of comments would be unnecessary and contrary to the public interest. The rule confers a benefit on national banks that are registered as municipal and/or government securities dealers by eliminating the franchise fee.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the regulatory flexibility analysis otherwise required under section 604 of the RFA (5 U.S.C. 604) is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes that certification and a short, explanatory statement in the **Federal Register** along with the final rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. While the rule requires national banks, Federal branches, and Federal agencies of all sizes that receive a UFIRS or ROCA rating of 3, 4, or 5 to pay an assessment surcharge, this will not create a significant or disparate impact on small institutions. The assessments for the 69 national banks, Federal branches, and Federal agencies with total assets of under $100 million that currently are rated 3, 4, or 5 would increase, in the aggregate, by approximately $357,683 per year, which is equal to approximately $5,184 per institution. Accordingly, a regulatory flexibility analysis under section 604 of the RFA is not required.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. The increase in the assessments of institutions rated a 3, 4, or 5 will be less than $1.0 million in the aggregate. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 12 CFR Part 8

Assessments, Fees, National banks.

Authority and Issuance

For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

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

Authority: 12 U.S.C. 93a, 481, 482, 3102, and 3108; 15 U.S.C. 78c and 78l; and 26 D.C. Code 102.

2. Section 8.2 is amended by adding new paragraphs (a)(7) and (b)(5) to read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(7) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (a)(1) through (a)(6) of this section by multiplying that figure by 1.25 for each bank that receives a rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System at its most recent examination.

(b) * * *

(5) The OCC shall adjust the semiannual assessment computed in accordance with paragraphs (b)(1) through (b)(4) of this section by multiplying that figure by 1.25 for each Federal branch or Federal agency that receives a ROCA rating (which rates risk management, operational controls, compliance, and asset quality) of 3, 4, or 5 at its most recent examination.

§ 8.15 [Removed]

3. Section 8.15 is removed.

Dated: December 1, 1997.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 97–31867 Filed 12–2–97; 11:32 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 516, 543, 545, 552, 556, 563

[No. 97–121]

RIN 1550–AA83

Application Processing

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: As a part of its on-going effort to review and streamline its regulations, the Office of Thrift Supervision (OTS) is issuing a final rule revising its comment procedures for specified applications and notices (collectively, applications). In addition to reorganizing the regulation, the OTS has expanded the comment period on these applications, set forth the information that a comment should contain, and replaced existing provisions requiring the OTS to conduct an oral argument on applications under certain circumstances, with provisions for informal and formal meetings. Under the final rule, the OTS will conduct an informal meeting ordinarily upon the request of a commenter, but also on its own initiative. Thereafter, upon the request of any participant to an informal meeting, the OTS will conduct a formal meeting. The OTS may also conduct a formal meeting on any application on its own initiative.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine Shepard, Senior Attorney, Regulations and Legislation Division, (202) 906–7275, Kevin Corcoran, Assistant Chief Counsel, Business Transactions Division, (202) 906–6962, Office of Chief Counsel; or Diana L. Garmus, Director, Corporate Activities Division, (202) 906–5683, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS regulations governing applications for permission to organize a federal stock or mutual savings association, to establish or relocate a branch office of a federal savings association, and to engage in a transaction that is subject to the Bank Merger Act require applicants to follow the public comment and review procedures at existing § 543.2 (e) and (f).

Currently, § 543.2 provides an opportunity for the public to submit communications in favor or in protest of applications, and permits the applicant to respond to any protest. When a protest is timely submitted, meets specified criteria and includes a request for oral argument, or if an applicant timely requests an oral argument, the regulation requires the OTS to conduct an oral argument on the merits of the application. The OTS may also hold an oral argument in the absence of any protests, if it determines that these additional proceedings are desirable.

On April 9, 1997, the OTS published a notice of proposed rulemaking revising these procedures.[1] In addition to reorganizing the regulations, the OTS proposed to amend its existing procedures to expand the comment period on applications, prescribe the information that comments must contain in order to be considered when the OTS evaluates applications, and replace existing provisions that require the OTS to conduct an oral argument on applications under certain circumstances, with provisions for discretionary conferences. The OTS believed that these changes would make the application processing procedures easier to understand and apply. Additionally, the OTS concluded that the discretionary conference procedures would align OTS regulations more closely with those of the other federal banking agencies in accordance with section 303 of the Community Development and Regulatory Improvement Act of 1994.

II. Summary of Comments and Description of Final Rule

A. General Discussion of the Comments

The public comment period on the proposed rule closed on June 9, 1997. Eight commenters responded to the proposal: four community advocacy groups, two trade associations, one federal savings association, and one professional records and information management association.

As a general matter, the four community advocacy groups opposed the elimination of mandatory oral arguments and supported the extension of the public comment period. Conversely, the trade associations and the federal savings association supported the proposed conference procedures and opposed the extension of the public comment period. The information management association expressed unqualified support for the proposal. Specific comments are discussed where appropriate in the section by section analysis below.

B. Section by Section Analysis

The final rule adds new Subparts C and D to part 516. The new subparts use plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the Federal Register Document Drafting Handbook (January 1997 edition). The primary goal of plain language drafting is to make regulations more readily understandable. Plain language drafting emphasizes the use of informative headings (often written as a question), non-technical language (including the use of ''you'') and sentences in the active voice.

Although commenters did not have the opportunity to comment on the plain language format prior to its use in this final rule, the OTS believes that the benefits of the format justify its use. Moreover, the use of the plain language format has not altered the substance of the regulation. The OTS welcomes comments on the plain language format, and suggestions on how to improve this format. The OTS is committed to converting more of its regulations to the plain language format in order to reduce regulatory burden. The recently issued OTS final rule on subsidiaries uses this plain English drafting format. See 12 CFR Part 559 (1997).

Subpart C—Comment Procedures

Section 516.100—What Does This Subpart Do?

Section 516.100 of the final rule provides that Part 516, Subpart C contains the procedures governing the submission of public comments on certain types of applications or notices pending before the OTS. Subpart C applies whenever a regulation incorporates the procedures, or where otherwise required by the OTS. This section is based on § 516.5(a)(1) of the proposed rule.

Section 516.110—Who May Submit a Written Comment?

Section 516.110 provides that any person may submit a written comment supporting or opposing an application. This provision is also based on proposed § 516.5(a)(1).

Section 516.120—What Information Should I Include in My Comment?

Under the existing rules, a protest is considered ''substantial'' if it is submitted in writing within the

[1] 62 FR 17110 (April 9, 1997).

comment period, and states a reason for the protest that is consistent with one of the regulatory bases for denying an application. To be a substantial protest, a comment must include the specific information required at existing § 543.2(e)(2) and (4). Under the current rules, the term ''substantial'' serves a purely ministerial purpose—a means of separating comments that contain the required information (and, thus, may serve as the basis for a request for an oral argument) from those that do not.[2]

The proposed rule at § 516.5(a)(3) described the information that a comment must contain in order to be considered by the OTS. Under the proposed rule, the comment was required to recite all relevant facts, including any economic or financial data supporting the commenter's position. Comments opposing an application were required to address at least one of the bases for denial of the application as set forth in the relevant regulations, recite relevant facts and supporting data addressing these relevant bases, and address any adverse effects on the commenter or community that may result from approval of the application.

One commenter supported this proposed provision, noting that it provides important guidance to the public. Another commenter argued that the comment content criteria give the OTS too much discretion to reject comments that do not meet the technical content requirements. Commenters argued that these requirements should not be construed in an overly burdensome way.

The OTS will review and consider all comments it receives regardless of whether the comment meets all of the regulatory criteria. The sole intent of the proposed content requirements was to guide commenters in providing information that would assist the OTS in understanding the basis for the comment. While the OTS will accept and consider all comments, including those that do not meet all of the content criteria, commenters are encouraged to include all relevant information and arguments.

The OTS has revised the comment content provisions at § 516.120 to emphasize that the OTS will not reject a comment that does not meet all of the content criteria, and has made other changes to enhance the rule's clarity. Under the final rule, a comment should recite relevant facts, including any demographic, economic, or financial data, supporting the commenter's position. If the commenter opposes an application, the comment should also address at least one of the relevant regulatory reasons for which the OTS may deny an application, recite any relevant facts and supporting data addressing these reasons, and address how the approval of the application could harm the commenter or any community.

If a commenter wishes to request an informal meeting under the revised procedures discussed in detail below, the commenter must file a request for the meeting with the comment. To ensure that the OTS will have sufficient notice of the questions to be discussed at the informal meeting, requests should describe the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues. *See* final § 516.120(b).

Section 516.130—Where Do I File My Comment?

Section 516.130 provides that public commenter must file its comment with the OTS office(s) set forth at § 516.1(c). If an informal meeting is requested, the commenter must simultaneously send a copy of the request to the applicant. This provision was not included in the proposed rule, but has been added to improve the clarity of the final rule.

Section 516.140—Where Do I File My Comment?

Under the current rules, a commenter must file a comment within 10 days of the publication of a public notice of the filing of the application. This time period may extended to 17 days after publication, if a request for extension is filed within the 10-day period. Proposed § 516.5(a)(2) replaced the existing 10-day comment period with a 25-day comment period.

Three commenters supported the proposed 25-day comment period, noting that this is a clearly defined period and gives all prospective commenters an adequate time to submit appropriate comments. Two commenters urged the OTS to lengthen the comment period to 30 days arguing that a 30-day comment period is used by the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), and the OTS in merger and acquisition applications. Two commenters thought that the comment period should be shorter. One argued that 15 days is sufficient. Another argued that the OTS should provide a 17-day comment period, at least for applications involving associations that have an ''outstanding'' or ''satisfactory'' rating under the community Reinvestment Act (CRA) and that are eligible for expedited treatment.

The OTS is adopting the proposed 25-day comment period. The OTS continues to believe that this expanded time period, without an automatic extension, is more workable and less confusing. The OTS cannot adopt a 30-day comment period without substantially revising other application processing requirements. In accordance with section 410 of the Competitive Equality Banking Act of 1987, § 516.2(c)(1) requires the OTS to request additional information, deem an application complete, or decline to process an application within 30 days of receipt of an application. The OTS believes it is necessary to have at least five days to review comments within this 30-day review period.

Under the proposed rule, the 25-day comment period would have begun on the date that the *notice* of application is published, a date that may precede the filing of the application. One commenter argued that the comment period should start on the day the application is submitted to the OTS. The commenter noted that this change would give community groups access to the application for the full comment period. The OTS agrees that commenters should have access to the application for the full comment period. Accordingly, under the final rule at § 516.140(a), the comment period begins on the date that the application is filed.

Under the proposed rule at § 516.5(a)(2), the OTS would grant extensions of the 25-day comment period on a case-by-case basis. The OTS would consider a late-filed comment if the OTS determined that the comment addressed a significant regulatory concern and, within the 25-day comment period, the commenter demonstrated good cause why it was unable to submit a timely comment. The length of any extension would be determined on a case-by-case basis.

Commenters generally supported this provision. However, several commenters urged the OTS to define good cause to include specified circumstances, to set specific time frames for extensions and to make other changes. One commenter objected that the unlimited discretion accorded to the OTS under the proposed extension provision would create procedural confusion.

The final rule continues to provide the OTS with maximum flexibility to address the unique circumstances of each extension request. For example, one commenter may need only an additional 24 hours to copy or mail documents. Another commenter may be

[2] The existing oral argument procedures and the new meeting procedures are discussed below.

awaiting pertinent public data and may require a longer opportunity to obtain and analyze the data. Accordingly, the final regulation at § 516.140 does not prescribe the duration of the extension period or the circumstances that would constitute good cause. Rather, the OTS will make these determinations on a case-by-case basis.

One commenter suggested that the OTS should encourage applicants and commenters to make joint requests for extensions of the comment period. One of the underlying purposes of the comment procedures is to promote dialogue and collaboration among the parties. Since joint extension requests will advance voluntary resolution of conflicts, the OTS encourages and generally will grant all jointly filed extension requests.

Under the existing procedures at § 543.2(e)(3), applicants may file an answer to any protest within 10 days after the last date for filing of comments. The proposed rule eliminated this provision. Instead, the OTS stated that it would generally provide an appropriate opportunity to respond by forwarding the comments to the applicant and requesting a response.

Two commenters noted that the OTS failed to set a deadline for the applicant's response. One commenter suggested that OTS should provide at least 10 days for response. The other suggested that the OTS adopt the FRB practice of requiring applicants to respond within eight business days.

It is unnecessary to establish a regulatory deadline for an applicant's response to comments. The OTS will continue to require applicants to respond to issues raised in comments the same way that it resolves other issues raised in applications. The OTS will, where appropriate, request the applicant to respond within 30 days to the issues raised in the application. See existing § 516.2(c).

Section 516.150—Will I Have Additional Opportunities to Discuss the Applications?

Under the existing rules at § 543.2(f), the OTS must conduct an oral argument if the applicant or anyone filing a substantial protest makes a timely request for the argument or if the OTS considers an oral argument desirable. The proposed rule would have replaced the mandatory oral argument provisions. Proposed § 516.5(b)(1) would have required additional proceedings only where the OTS determined that the proceedings would assist in the disposition of the application or would assist in the resolution of any issues raised by the application. Rather than an oral argument, the proposed rule permitted the OTS to arrange a conference between the applicant, commenters, and others. The proposed rule did not prescribe procedures for the conference. Instead, the proposed rule permitted the OTS to select the procedures appropriate to the application on a case-by-case basis.

Three commenters supported the conference procedures contained in the proposed rule. These commenters concluded that the conference procedures were more efficient and flexible than the current oral argument procedures.

Four community group commenters opposed the deletion of the mandatory oral argument. These commenters asserted that oral arguments: (1) Do not unduly delay the application process; (2) are conducive to fully informed decision making by the OTS; (3) are not hard to understand or apply; (4) ensure that consumer issues are adequately considered; and (5) promote dialogue and exchange between the association and commenters.[3]

The OTS continues to believe that formal oral arguments before a presiding officer are not necessary or productive in most cases.[4] More often, comments can best be resolved in a less formal setting, such as a meeting or a telephone call. Accordingly, the final rule states that the OTS generally will conduct an informal meeting on applications upon the request of any commenter.

Additionally, if an informal meeting fails to facilitate the resolution of issues to the satisfaction of any participant in an informal meeting, the final rule provides that the OTS will conduct a formal meeting before a presiding officer upon the filing of a request. The OTS may also conduct a formal meeting on any application on its own initiative. The new OTS informal and formal meeting procedures are based upon the OCC's related rule governing meetings and hearings at 12 CFR 5.11.

Thus, the final rule at § 516.150 states that the OTS may provide a commenter with additional opportunities to discuss the application in informal or formal meetings. The new procedures are contained in a new subpart D to part 516. The sections of this new part are discussed below.

Subpart D—Meeting Procedures

Section 516.160—What Does This Subpart Do?

Subpart D establishes the procedures governing informal and formal meetings. It applies whenever a regulation incorporates the procedures in the subpart, or when otherwise required by OTS.

Section 516.170—What Procedures Govern Informal Meetings on Applications?

Section 516.170 establishes the OTS informal meeting procedures. Under § 516.170(a), the OTS may arrange an informal meeting to clarify and narrow the issues and to facilitate the resolution of the issues. If a commenter has filed a written request containing the information described at § 516.120(b), the OTS will arrange a meeting. The OTS may also arrange a meeting upon its own initiative. The purpose of the informal meeting is to promote dialogue and to seek to achieve the voluntary resolution of issues. The OTS will inform the applicant and commenters requesting a meeting of its decision on a request for a meeting, or its decision to hold a meeting on its own initiative. See final § 516.170(b).

One commenter suggested that the final rule should require the OTS to announce its decision on the informal meeting before the expiration of applicable approval time frames specified in §§ 516.2 and 516.3. The purpose of the informal meeting is to address and resolve issues relevant to the disposition of the application. An informal meeting would, thus, be pointless if it is held after approval time frames lapse and the application is deemed approved. Because the announcement of the decision on a

[3] In the proposed rule, the OTS noted that the discretionary conference procedures would be more consistent with the rules of the other federal banking agencies. One commenter argued that this rationale is not convincing since the other banking regulators often have supplemental procedures for gathering information. The only such procedure cited by the commenter, however, was the OCC's policy of conducting expedited CRA examinations upon request. The OTS has addressed these targeted examinations below at Section II.D.3.

[4] Two commenters argued that the OTS's proposed deletion of the mandatory oral hearing requirement was inconsistent with congressional intent expressed in section 2612 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). This section specifically requires the FRB to hold a hearing where a bank holding company seeks to acquire a thrift. EGRPRA, however, does not provide a similar legal right when a bank holding company acquires a commercial bank. The commenters argued that EGRPRA's retention of hearings in thrift acquisitions reflects Congress' view that the agency should provide hearings in all applications involving savings associations. The OTS disagrees. The hearing requirement in section 2612 of EGRPRA, by its own terms, is limited to specified proceedings before another regulatory agency. There is no legislative history in EGRPRA mandating a broader application. If Congress intended to require hearings whenever a savings association is involved in any application proceeding before any banking regulator, the OTS believes that Congress would have manifested this intent more clearly.

meeting obviously must precede the approval of the application, the OTS has not added the suggested provision.[5]

The OTS will invite the applicant and the commenter filing the request to the informal meeting. The OTS may also invite any other interested persons to attend. The OTS will inform meeting participants of the date, time, location and format for the meeting a reasonable time in advance of the meeting. See final § 516.170(c). The OTS may select any format for the meeting. See final § 516.170(d). An informal meeting may encompass an array of forums including, but not limited to, an informal telephone conference call or a face-to-face meeting.

One commenter suggested that any announcement of additional proceedings should identify all persons invited to the conference and the substance of the comments received. The commenter asserted that this procedure would allow the applicant to prepare for, and to contact appropriate persons before the conference. The OTS does not follow a specific format for informing participants of the informal meeting. Rather, the OTS will advise participants using an appropriate method for the meeting. For example, if the OTS determines that an issue may be resolved in a telephone conference, the OTS would not necessarily issue a written notice. Instead, the OTS might place an advance telephone call informing the participants of the date and time of the conference call. By contrast, where another type of meeting is selected, the notice may include some or all of the elements identified by the commenter.

The OTS anticipates that informal meetings will be adequate to facilitate the resolution of issues in most proceedings. However, the OTS recognizes that it may encounter situations where formal meetings may be necessary. Accordingly, the final rule recognizes that an informal meeting may progress to a formal meeting before a presiding officer under § 516.180. Accordingly, within three days after the informal hearing, any participant in the informal meeting may request the OTS to hold a formal meeting. See final § 516.170(e). The participant making the request should describe the nature of the issues or facts to be presented and the reasons why a formal meeting is necessary to make an adequate presentation of the facts or issues. The request must be filed with the OTS and copies must be sent to other participants in the informal meeting.

Section 516.180—What Procedures Govern Formal Meetings on Applications?

If a participant in the informal meeting files a request for a formal meeting under § 516.170(e), the OTS will grant the request. Additionally, the OTS may hold a formal meeting on its own initiative, if it determines that written submissions and informal meetings are insufficient to adequately present issues or facts to the OTS, or that a formal meeting would otherwise benefit the decisionmaking process. The OTS may limit the issues considered at the formal meeting to issues it deems relevant or material. See final § 516.180(a).

The OTS anticipates that most formal meetings will follow an informal meeting. Accordingly, the OTS will not grant a request for a formal meeting, unless an informal meeting has been conducted under § 516.170. However, there may be occasions where the informal meeting may be unnecessary. Under these or other circumstances, the OTS may elect to use its authority to conduct a formal meeting on its own initiative.

The OTS will announce formal meetings by issuing a Notice of Formal Meeting. The Notice will state the subject and date of the filing, the time and place of the formal meeting, and the issues to be addressed. The OTS will send the Notice to the applicant and any commenter requesting a formal meeting. The OTS may invite other interested persons to participate in the formal meeting by sending the Notice to such persons. See final § 516.180(b).

Paragraph (c) addresses who may participate in a formal meeting. A person receiving a Notice must notify the OTS of its intent to participate in the formal meeting within ten days after the OTS issues the Notice. At least five days before the formal meeting, all participants must provide the names of their witnesses and copies of their proposed exhibits to the OTS, the applicant and any other person designated by the OTS.

Section 516.180 (d) and (e) govern the conduct of the formal meeting. Under § 516.180(e), the OTS will appoint a presiding officer to conduct a formal meeting. The presiding officer is responsible for all procedural questions not governed by § 516.180. Subject to the rulings of the presiding officer, the participants may make opening statements and present witnesses, material and data. All presenters of documentary material must furnish copies of the material to the OTS and to each other participant. The OTS will arrange for a transcript of the formal meeting. Each participant must bear the cost of the transcript that it requests for its use. See final § 516.180(d). Section 516.180(e)(2) provides that certain rules governing the conduct of formal meetings and presentation of evidence do not apply to formal meetings held under § 516.180.

The rule does not address such procedural issues as whether the formal meeting will be public or private. Two commenters advocated the addition of a provision mandating public hearings whenever a public meeting is requested. These commenters noted that public hearings provide opportunities for all citizens to offer their views, including senior citizens, public housing residents and others. These commenters also noted that this change would align OTS procedures more closely to those of the other banking agencies.

Commenters have always had the ability to request public hearings on issues involving the application, and the OTS has had the discretion whether or not to hold such hearings.[6] The ability of members of the public to request public hearings, and the OTS's discretion to hold public hearings, is not affected by this final rule. The final rule would continue to permit the agency to hold a public formal meeting.

Section § 516.190—Will a Meeting Affect Application Processing Time Frames?

The proposed rule at § 516.5(b)(2) stated that if the OTS timely notifies the applicant that it intends to hold a conference, the OTS would temporarily suspend applicable time periods for automatic approval of the application. Two commenters supported this provision.

The final rule at § 516.190 adopts the proposed rule with minor editorial changes. The final rule provides for suspension of application processing time frames if the OTS has arranged an informal or formal meeting. The time periods will resume when the OTS determines that a record has been developed that sufficiently supports a determination on the issues raised in the comments.

C. Conforming Amendments to Related Provisions

The proposed rule included conforming amendments to §§ 543.2, 545.92, 545.95, 552.2–1, 552.2–2 and 556.5. Commenters had the following comments on these conforming changes.

[5] Where an application is subject to a completeness review under § 516.2(c), the OTS will generally advise applicants and commenters of the informal meeting before deeming the application complete.

[6] See Op. Chief Counsel (November 24, 1993).

1. Duplicative Publication Requirements

One commenter observed that the publication of notice provisions in proposed §§ 543.2(d)(1), 545.92(d)(1), 552.2–1(a)(1) and 563.22(e) are unnecessarily duplicative. The commenter urged the OTS to consolidate these provisions into a single regulation under Part 516. The commenter noted that this approach would streamline the OTS regulations and more closely conform OTS regulations to the procedural regulations of the other banking agencies.

The OTS agrees that the cited publication requirements are unnecessarily duplicative and has consolidated §§ 543.2(d)(1), 545.92(d)(1), 552.2–1(a)(1) and 563.22(e)(1) into a new subpart under Part 516. New Subpart B uses the same plain language drafting techniques as used in Subparts C and D.

The proposed rules would have required an applicant to publish the notice of the filing of the application no earlier than three days before and no later than the date of the filing of the application. See proposed §§ 543.2(d)(1), 545.92(d)(1) and 552.2–1(a)(1). Various commenters suggested that this three-day publication requirement should be modified to require publication as soon as possible after filing of the application, or extended to require publication within 7, 10, or 30 days of the filing of the application.

The OTS has concluded that the proposed three day requirement may be too onerous under certain circumstances, such as where local newspapers are published on a weekly basis. Unfortunately, uniformity with the other bank regulatory agencies on this issue is impossible, since each bank regulatory agency has established different publication requirements.[7] Nonetheless, the OTS has decided to adopt the FRB's practice of requiring the filing of the application within seven days after the publication of the newspaper notice. See final § 516.60. This change does not affect the 30-day comment period. As noted above, the final rule has been revised so that the comment period begins on the date that the application is filed rather than the date of the newspaper notice. See final § 516.140(a).

[7] The OCC requires publication on the date of filing or as soon as possible thereafter. 12 CFR 5.8(a). The FDIC generally requires publication no earlier than 30 days before filing, and no later than the date of filing. 12 CFR 303.6(f)(1)(ii). The FRB generally requires filing within seven days of publication. 12 CFR 262.3(b).

2. Posting Requirement

Section 545.95 addresses changes of permanent locations and redesignations of home and branch offices by federal associations. The current rule requires an applicant to post a notice of the application for 17 days from the date of the publication of the newspaper notice—a period that is equal to the extended comment period under current application processing procedures. The proposal would have required the applicant to post a notice of an application for 25 days from the date of first publication. This time period would more closely track the 25-day revised comment period.

One commenter argued that § 545.95 unnecessarily duplicates the Federal Deposit Insurance Act (''FDIA'') provisions on branch closures, which require posting for 30 days and sending customer notices 90 days before closure.[8] See FDIA Section 42 (12 U.S.C. 1831r–1). The purposes of the two posting requirements differ. The posting requirement under § 545.95 is intended to allow customers the opportunity to comment on a proposed application to change an office location or redesignate a home or branch office. The FDIA posting requirement, on the other hand, is intended to provide notice to customers of the proposed date of closing of a branch and to identify where customers may obtain services following that date. Since the purposes of the two notices differ, both requirements will continue to be applicable. However, the OTS would not object if an institution were to combine the two notices, provided the combined notice clearly complies with the notification, posting and timing requirements under § 545.95 and the FDIA. Any combined posting should indicate that consummation of the transaction is contingent on OTS review.

3. Branching by Federal Savings Associations

The OTS policy statement on branching by federal savings associations is found at § 556.5. The OTS proposed to revise this section to include a cross citation indicating that the procedures for commenting on applications are set forth in Part 516 and Part 563e.

A commenter asserted that the proposed amendment was confusing and suggested the deletion of the cross-reference to Part 563e. The OTS modified this reference to specifically cite the applicable regulations at 12 CFR 563e.29 (c) and (d).

[8] This commenter also questions whether the posting requirement has any applicability for short distance relocations. The posting requirement at § 545.95(b)(1)(ii) does not apply to short distance relocations. *See* existing § 545.95(c).

D. Related Issues

1. Availability of Applications

Two commenters offered a number of suggestions designed to improve the availability of OTS information on applications. The OTS has been working on this issue for some time. The agency began publishing a list of pending applications on its web site on August 12, 1997. The list is updated daily and is available at http://www.ots.treas.gov under ''Public Information'' and ''Industry Data.'' Additionally, major new applications are highlighted under the ''Significant New Applications'' page.

2. Publication of OTS Decisions on Applications

One commenter urged the OTS to publish its decisions on applications. The commenter noted that this change would conform the OTS practices to those of the FRB which publishes its decisions in the Federal Reserve Bulletin.

While the OTS will not publish the text of its decisions, it intends to continue its current practice of simultaneously informing the applicant and any commenters of the disposition of an application. In addition, the OTS intends to modify its web site to indicate whether applications have been granted or denied. If a commenter or any other member of the public wishes to obtain a copy of the public portion of an OTS decision, it may do so by contacting the OTS's Information Services Division.

3. Targeted CRA Exams

One commenter suggested that OTS should implement the OCC's policy of conducting targeted CRA examinations when CRA issues are raised by a commenter and the issues were not addressed in the last examination.

The OTS conducts regular CRA examinations on a set cycle. In most cases, the OTS has a timely assessment of CRA performance available in connection with processing an application. Where an applicant's CRA record is not current, however, the OTS may conduct a targeted CRA review to obtain the information necessary to access performance.

III. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a ''significant regulatory

action'' for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

The OTS certified that the proposed rule would not have a significant economic impact on a substantial number of small entities under section 605(b) of the Regulatory Flexibility Act. One commenter disagreed with this certification. The commenter argued that the proposal would make it substantially more difficult for small communities to comment on applications because these communities rarely have CRA expertise.

The OTS disagrees. The final rule should make it easier for small entities, including small communities, to comment on applications. The final rule provides guidance as to the content of the comments to be filed and expands the time period for the receipt of such comments. Thus, the final rule should provide small entities with a greater opportunity to file comments. Moreover, the rule permits commenters to participate in informal and formal meetings with the applicant and the OTS.

Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will enable the OTS to process applications received from all applicants, including small savings associations and other small entities, more expeditiously. It also allows all entities, including small entities, a longer period in which to submit comments on applications.

V. Paperwork Reduction Act of 1995

The information collection requirements contained in this rule are found at 12 CFR 516.50–80, 516.100–190, 543.2, 545.92, 545.95, 552.2–1, and 563.22. All of the collections of information, except those found in §§ 516.50–80 and §§ 516.100–190, have been previously approved by the Office of Management and Budget and the burden under them remains unchanged under this rule (OMB Control Nos. 1550–0005, 1550–0006, and 1550–0016). The requirements in new §§ 516.50–80 and §§ 516.100–190 were previously found in several of the sections mentioned above. New §§ 516.50–80 and §§ 516.100–190 do not add any additional burden and the new citations will be added to the approved packages under OMB Control Nos. 1550–0005, 1550–0006, and 1550–0016 by Paperwork Reduction Act Change Worksheet.

Respondents/recordkeepers are not required to respond to the collections of information unless the collection displays a currently valid OMB control number.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This final rule simplifies existing procedures and should reduce regulatory burden. The OTS has determined that the final rule will not result in expenditures by state, local or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VII. Effective Date

Section 553(d) of the Administrative Procedure Act (''APA'') requires an agency to publish a substantive rule at least 30 days before its effective date. Section 553(d)(1) of the APA, however, permits an agency to waive the normal 30-day delay in effective date for good cause or when a rule relieves a restriction.

The final rule is exempt from the 30-day delayed effective date requirement. Initially, we note that the 30-day delayed effective date requirement applies only to substantive rulemaking. Today's rule is primarily a procedural rule that regulates the manner in which applicants and commenters present their viewpoints on pending applications to the OTS. Moreover, to the extent that the rule may have any impact on the rights or interest of any party, the rule relieves restrictions by streamlining the public comment process.

List of Subjects

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 543

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 556

Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Office of Thrift Supervision amends title 12, chapter V, of the Code of Federal Regulations as set forth below:

PART 516—APPLICATION PROCESSING GUIDELINES AND PROCEDURES

1. The authority citation for part 516 is revised to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 2901 *et seq.*

2. Existing §§ 516.1, 516.2 and 516.3 are redesignated as subpart A, and the subpart heading is added to read as follows:

Subpart A—Application Processing Guidelines

§ 516.2 [Amended]

3. Section 516.2(c)(6) is removed and reserved.

4. Subpart B, consisting of §§ 516.50 through 516.80, is added to read as follows:

Subpart B—Publication Requirements

Sec.
516.50 Who must publish a public notice of an application?
516.60 When must I publish the public notice?
516.70 Where must I publish the public notice?
516.80 What language must I use in my publication?

Subpart B—Publication Requirements

§ 516.50 Who must publish a public notice of an application?

This subpart applies whenever an OTS regulation requires an applicant (''you'') to follow the public notice procedures in this subpart.

§ 516.60 When must I publish the public notice?

You must publish a public notice of the application no earlier than seven days before and no later than the date of filing of the application.

§ 516.70 Where must I publish the public notice?

You must publish the notice in a newspaper having a general circulation in the following communities:

(a) The community in which your home office(s) are located, or if you are filing an application for permission to organize, the community in which your home office will be located; and

(b) If you are filing a branch application, the community to be served by the branch office.

§ 516.80 What language must I use in my publication?

(a) *English.* You must publish the notice in a newspaper printed in the English language.

(b) *Other than English.* If the OTS determines that the primary language of a significant number of adult residents of the community is a language other than English, the OTS may require that you simultaneously publish additional notice(s) in the community in the appropriate language(s).

5. Subpart C, consisting of §§ 516.100 through 516.150, is added to read as follows:

Subpart C—Comment Procedures

Sec.
516.100 What does this subpart do?
516.110 Who may submit a written comment?
516.120 What information should I include in my comment?
516.130 Where do I file my comment?
516.140 When do I file my comment?
516.150 Will I have additional opportunities to discuss the application?

Subpart C—Comment Procedures

§ 516.100 What does this subpart do?

This subpart contains the procedures governing the submission of public comments on certain types of applications or notices (''applications'') pending before the OTS. It applies whenever a regulation incorporates the procedures in this subpart, or where otherwise required by the OTS.

§ 516.110 Who may submit a written comment?

Any person (''you'') may submit a written comment supporting or opposing an application.

§ 516.120 What information should I include in my comment?

(a) Your comment should recite relevant facts, including any demographic, economic, or financial data, supporting your position. If you file a comment opposing an application, your comment should also:

(1) Address at least one of the reasons a relevant regulation lists as to why the OTS may deny an application;

(2) Recite any relevant facts and supporting data addressing these reasons; and

(3) Address how the approval of the application could harm you or any community.

(b) If you wish to request an informal meeting under § 516.170, you must file a request with your comment. You should describe the nature of the issues or facts to be discussed and the reasons why written submissions are insufficient to adequately address these facts or issues.

§ 516.130 Where do I file my comment?

You must file your comment with the OTS office(s) set forth at § 516.1(c). If you request an informal meeting under § 516.170, you must simultaneously send a copy of the request to the applicant.

§ 516.140 When do I file my comment?

(a) *General.* Except as provided in paragraph (b) of this section, you must file a written comment with the OTS within 25 days after the application is filed with the OTS.

(b) *Late-filed comments.* The OTS will consider your late-filed comment if:

(1) Within the comment period, you demonstrate to the OTS good cause why you could not submit a timely comment; and

(2) The OTS concludes that your comment addresses a significant regulatory concern and will assist in disposing of the application.

§ 516.150 Will I have additional opportunities to discuss the application?

The OTS may provide you with additional opportunities to discuss the application in informal or formal meetings under subpart D of this part.

6. Subpart D, consisting of §§ 516.160 through 516.190, is added to read as follows:

Subpart D—Meeting Procedures

516.160 What does this subpart do?
516.170 What procedures govern informal meetings on applications?
516.180 What procedures govern formal meetings on applications?
516.190 Will a meeting affect application processing time frames?

Subpart D—Meeting Procedures

§ 516.160 What does this subpart do?

This subpart contains informal and formal meeting procedures. It applies whenever a regulation incorporates the procedures in this subpart, or when otherwise required by the OTS.

§ 516.170 What procedures govern informal meetings on applications?

(a) *When will the OTS arrange an informal meeting?* The OTS may arrange an informal meeting with the applicant, commenters, or any other interested persons to clarify and narrow the issues and to facilitate the resolution of the issues. If a commenter has filed a written request for an informal meeting containing the information described at § 516.120(b), the OTS will arrange an informal meeting. The OTS also may arrange an informal meeting on its own initiative.

(b) *What action will the OTS take on an informal meeting request?* The OTS will inform the applicant and commenters requesting an informal meeting of the OTS decision on a request for an informal meeting, or of its decision to hold an informal meeting on its own initiative.

(c) *How will the OTS inform the informal meeting participants of the date, time, location and format for the informal meeting?* The OTS will invite the applicant and the commenter filing the request for the informal meeting. The OTS may also invite any other interested persons to attend. The OTS will inform the participants of the date, time, location, and format for the informal meeting a reasonable time in advance of the informal meeting.

(d) *What procedures will govern the conduct of the informal meeting?* The OTS may hold informal meetings in any format, including a telephone conference or face-to-face meeting.

(e) *Will there be an additional opportunity to discuss the application?* Within three days after the informal meeting, any participant in the informal meeting may request the OTS to hold a formal meeting under § 516.180. The participant should describe the nature of the issues or facts to be presented and the reasons why a formal meeting is necessary to make an adequate presentation of the facts or issues. The participant must file the request with the OTS and send copies of the request to other participants in the informal meeting.

§ 516.180 What procedures govern formal meetings on applications?

(a) *When will the OTS hold a formal meeting?* The OTS will not grant a request for a formal meeting unless an informal meeting has been conducted under § 516.170. The OTS will grant all requests for a formal meeting filed under § 516.170(e). The OTS may also

hold a formal meeting on its own initiative, if it determines that written submissions and informal meetings are insufficient to adequately present issues or facts to the OTS, or that a formal meeting would otherwise benefit the decisionmaking process. The OTS may limit the issues considered at the formal meeting to issues that the OTS deems relevant or material.

(b) *How will the OTS announce the formal meeting?* The OTS will issue a Notice of Formal Meeting that will state the subject and date of the filing, the time and place of the formal meeting and the issues to be addressed. The OTS will send the Notice to the applicant and any person requesting a formal meeting under § 516.170(e). The OTS may also invite other interested persons to participate in the formal meeting by sending the Notice to such persons.

(c) *Who may participate in the formal meeting?* A person receiving a Notice must notify the OTS of its intent to participate within ten days after the OTS issues the Notice. At least five days before the formal meeting, all participants in the formal meeting must provide the names of their witnesses and copies of proposed exhibits to the OTS, the applicant, and any other person designated by the OTS.

(d) *Will the formal meeting be transcribed?* The OTS will arrange for a transcript. Each participant must bear the cost of any copies of the transcript it requests for its use.

(e) *What procedures govern the conduct of the formal meeting?* (1) The OTS will appoint a presiding officer to conduct the formal meeting. The presiding officer is responsible for all procedural questions not governed by this section. Subject to the rulings of the presiding officer, a participant may make opening statements and present witnesses, material and data. If a participant presents documentary material, it must furnish copies of the material to the OTS and to each other participant. The OTS may keep the formal meeting record open for additional information for up to 14 days following the receipt of the transcript.

(2) The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. Appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*) and the OTS Rules of Practice and Procedure in Adjudicatory Proceedings (12 CFR part 509) do not apply to formal meetings under this section.

§ 516.190 Will a meeting affect application processing time frames?

If the OTS has arranged a meeting, it will suspend applicable application processing time frames, including the time frames for deeming an application complete and the applicable approval time frames specified in § 516.2 or 516.3. The time period will resume when the OTS determines that a record has been developed that sufficiently supports a determination on the issues raised in the comments.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

7. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

8. In § 543.2, paragraph (c) is removed and reserved and paragraphs (d)(1), (d)(3), (d)(4), (e), (f) and (h)(1) are revised to read as follows:

§ 543.2 Application for permission to organize.

* * * * *

(d) * * *

(1) The applicant must publish a public notice of the application to organize in accordance with the procedures specified in subpart B of part 516 of this chapter.

* * * * *

(3) The OTS shall give notice of the application to the State official who supervises savings associations in the State in which the new association is to be located.

(4) Any person may inspect the application and all related communications at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(e) *Submission of comments.* Commenters may submit comments on the application in accordance with the procedures specified in subpart C of part 516 of this chapter.

(f) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

* * * * *

(h) * * *

(1) Applications for permission to organize an interim Federal savings association are not subject to paragraphs (d), (e), (f) or (g)(2) of this section.

* * * * *

PART 545—OPERATIONS

9. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

10. In § 545.92, paragraphs (d), (e) heading, (e)(2) and (f) are revised, and paragraphs (i) and (j) are removed to read as follows:

§ 545.92 Branch offices.

* * * * *

(d) *Processing of applications/notices.* Processing of applications and notices shall be subject to the following procedures:

(1) *Publication.* (i) A federal savings association must publish a public notice of the branch application or notice in accordance with the procedures specified in subpart B of part 516 of this chapter.

(ii) Promptly after publication of the public notice, the savings association shall transmit copies of the public notice and publisher's affidavit of publication to the OTS.

(iii) The application or notice and all related communications may be inspected by any person at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Submission of application or notice.* A Federal savings association must comply with § 556.5 of this chapter and shall file the application required under § 516.3(b)(2) of this chapter or the notice required under § 516.3(a) of this chapter within three days after the publication of the public notice under paragraph (d)(1) of this section.

(3) *Submission of comments.* Commenters may submit comments on the application or notice in accordance with the procedures specified in subpart C of part 516 of this chapter.

(4) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

(e) *Approval of branch application.*

* * * * *

(2) An application shall be deemed to be approved 30 days after notification that the application is complete, unless the OTS suspends the applicable processing time frames under § 516.190 of this chapter, or the OTS objects to the application on the grounds set forth under paragraph (e)(1) of this section.

(f) *Approval of branch notice.* A notice filed by a Federal savings association that qualifies for expedited treatment shall be deemed to be approved 30 days after its filing with the OTS, unless the OTS suspends the applicable processing time frames under § 516.190 of this chapter; the OTS objects to the application on the grounds set forth in paragraph (e)(1) of this section; or the OTS determines to

process the filing as an application under § 516.3(a)(3) of this chapter. If the OTS suspends the applicable processing time frames, the savings association may not open a branch until the OTS provides a notification of its approval.

* * * * *

11. In § 545.95, paragraph (a) and paragraph (b)(1)(ii) are revised to read as follows:

§ 545.95 Change of office location and redesignation of offices.

(a) *Eligibility.* A Federal savings association may change the permanent location of its home office or any approved branch office, or redesignate a home or branch office subject to the appropriate expedited or standard treatment procedures for establishing a branch office set forth in § 545.92 of this part.

(b) * * *

(1) * * *

(ii) The applicant shall post notice of the application for 25 days from the date of first publication in a prominent location in the office to be closed or redesignated.

* * * * *

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

12. The authority citation for part 552 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

13. Section 552.2–1 is amended by revising paragraph (a) to read as follows:

§ 552.2–1 Procedure for organization of Federal stock association.

(a) *Application for permission to organize.* Applications for permission to organize a Federal stock association are subject to this section and to § 543.3 of this chapter. Recommendations by employees of the OTS regarding applications for permission to organize are privileged, confidential, and subject to § 510.5 (b) and (c) of this chapter. The processing of an application under this section shall be subject to the following procedures:

(1) *Publication.* (i) The applicant shall publish a public notice of the application to organize in accordance with the procedures specified in subpart B of part 516 of this chapter.

(ii) Promptly after publication of the public notice, the applicant shall transmit copies of the public notice and publisher's affidavit of publication to the OTS in the same manner as the original filing.

(iii) Any person may inspect the application and all related communications at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Notification to interested parties.* The OTS shall give notice of the application to the State official who supervises savings associations in the State in which the new association is to be located.

(3) *Submission of comments.* Commenters may submit comments on the application in accordance with the procedures specified in subpart C of part 516 of this chapter.

(4) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

* * * * *

14. Section 552.2–2 is amended by revising paragraph (a) to read as follows:

§ 552.2–2 Procedures for organization of interim Federal stock association.

(a) Applications for permission to organize an interim Federal savings association are not subject to subparts B, C and D of part 516 of this chapter or § 552.2–1(b)(3) of this part.

* * * * *

PART 556—STATEMENTS OF POLICY

15. The authority citation for part 556 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1464, 1701j–3; 15 U.S.C. 1693–1693r.

16. Section 556.5 is amended by revising paragraph (c)(4) to read as follows:

§ 556.5 Branching by Federal savings associations.

* * * * *

(c) * * *

(4) *Comment procedures.* Comments on applications for branches must be submitted in writing and factually documented. Comment procedures are set forth in subpart C of part 516 of this chapter, § 563e.29 (c) and (d) of this chapter, the OTS Application Processing Handbook, and other supervisory guidance issued by the OTS.

* * * * *

PART 563—OPERATIONS

17. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1828, 3806; 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

18. Section 563.22 is amended by revising paragraphs (e)(1), (e)(4) and (f)(3) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(e)(1) Unless the OTS finds that it must act immediately in order to prevent the probable default of one of the savings associations involved, the applicant must publish a public notice of the application in accordance with the procedures specified in subpart B of part 516 of this chapter. In addition to initial publication, the applicant must publish on a weekly basis during the period allowed for furnishing reports under paragraph (e)(2) of this section.

* * * * *

(4) Commenters may submit comments on the application in accordance with the procedures set forth in subpart C of part 516 of this chapter, except that comments may be submitted at any time during the period described in paragraph (e)(2) of this section. The OTS may arrange informal or formal meetings in accordance with the procedures set forth in subpart D of part 516 of this chapter.

* * * * *

(f) * * *

(3) The OTS suspends the applicable processing time frames under § 516.190 of this chapter;

* * * * *

Dated: November 26, 1997.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 97–31612 Filed 12–3–97; 8:45 am]

BILLING CODE 6720–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: On June 12, 1997, the NCUA Board issued comprehensive final amendments to the NCUA Rules and Regulations on investment and deposit activities. Two new provisions will result in a number of credit unions having to significantly change the way they do business with broker-dealers, which was not NCUA's intention. In addition, there are a few minor errors in the regulatory language. This document revises the two broker-dealer provisions to make them consistent with NCUA's intent and corrects the minor errors.

DATES: The interim rule is effective January 1, 1998. Comments must be received on or before February 2, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: David M. Marquis, Director, Office of Examination and Insurance, (703) 518–6360, or Daniel Gordon, Senior Investment Officer, Office of Investment Services, (703) 518–6620, or at the above address.

SUPPLEMENTARY INFORMATION: The comprehensive final rule amendments to 12 CFR part 703 were published on June 18, 1997 (62 FR 32989).

Broker-Dealers

Section 703.50(a) of the final rule requires that any broker-dealer used by a federal credit union be either a federally regulated depository institution or registered with the Securities and Exchange Commission (SEC). NCUA particularly was concerned about credit unions doing business with entities that sell only certificates of deposit (CDs), as these entities are not subject to comprehensive regulatory oversight. NCUA does not wish to force credit unions to stop doing business with legitimate CD brokers, however, and has determined that a credit union has sufficient control over the transaction when it purchases a CD or share certificate directly from the issuing bank, credit union, or other depository institution. Under the rule, as amended by this document, a federal credit union can use a CD broker to find an institution offering high rates, and may compensate the broker for that service, but it must send the funds directly to the institution and not through the broker or other third party.

Safekeeping

Section 703.60(c) provides that a federal credit union may not allow a selling broker-dealer to safekeep its securities. NCUA's intent was to ensure that the credit union was the beneficial owner of securities it purchased. NCUA did not intend to change the way most federal credit unions do business. NCUA believes that the regulations and oversight of the SEC and depository institution regulators provide adequate protection for credit unions and is amending the rule to require only that safekeepers be entities regulated by such agencies.

Corrections

Section 703.80(a) of the final rule provides that before a federal credit union purchases or sells a security, except for new issues it purchases at par, it must obtain a price quotation on the security from at least two broker-dealers or from an industry-recognized information provider. NCUA added the requirement to ensure that federal credit unions are aware of the market prices of securities they buy and sell. The exception recognizes that the selling price of a new issue is, by definition, the market price.

Although NCUA intended to exempt all new issues of securities from the pricing requirement, new issues of some securities are sold at a discount from their face value, not at par. NCUA is correcting this oversight by adding that a federal credit union need not obtain two prices, or a price from an industry-recognized information provider, for a new issue of a security purchased at original issue discount.

NCUA also is correcting three other minor errors with this document.

Interim Final Rule

The new amendments to Part 703 take effect January 1, 1998. If the provisions discussed above are not revised before then, credit unions will have to unnecessarily change the way they do business. NCUA has determined that, in this case, the Administrative Procedure Act notice and comment procedures are impracticable and contrary to the public interest. 5 U.S.C. 553(b)(3)(B). Accordingly, NCUA is issuing this document as an interim final rule, with an effective date of January 1, 1998. NCUA is requesting comments, however, to determine whether further changes to the provisions are warranted.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small credit unions, defined as those having less than $1 million in assets. NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

This interim final rule does not change the paperwork requirements of Part 703.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This interim final rule applies only to federal credit unions, and as such, has no direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 703 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

2. Amend § 703.50 as follows:

§ 703.50 [Amended]

a. In paragraph (a), by removing ''You'' at the beginning of the paragraph and adding the phrase ''Except as provided in paragraph (c) of this section, you'' in its place; and

b. Add paragraph (c) to read as follows:

§ 703.50 What rules govern my dealings with entities I use to purchase and sell investments (''broker-dealers'')?

* * * * *

(c) The requirements of paragraph (a) of this section do not apply when you purchase a certificate of deposit or share certificate directly from a bank, credit union, or other depository institution.

3. Amend § 703.60 by revising paragraph (c) to read as follows:

§ 703.60 What rules govern my safekeeping of investments?

* * * * *

(c) Any safekeeper you use must be regulated and supervised by either the Securities and Exchange Commission or a federal or state depository institution regulatory agency.

* * * * *

§ 703.80 [Amended]

4. Amend § 703.80 by adding the phrase ''or at original issue discount'' after the word ''par'' and before the comma in paragraph (a) introductory text.

§ 703.100 [Amended]

5. Amend § 703.100 by adding the word ''security'' between the words ''priority'' and ''interest'' in paragraph (k)(2).

§ 703.150 [Amended]

6. Amend § 703.150 by adding the word ''investment'' in place of the word ''security'' each time it appears in the definitions of ''Adjusted trading'' and ''Pair-off transaction.''

[FR Doc. 97–31504 Filed 12–3–97; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; delay of compliance.

SUMMARY: On March 7, 1997, the NCUA Board issued final amendments to part 704 of the NCUA Rules and Regulations, which governs corporate credit unions. The effective date of the final amendments is January 1, 1998. While the effective date remains the same, this document delays mandatory compliance with the final amendments until May 1, 1998. The delay gives corporate credit unions more time to meet the capital, staff, and infrastructure requirements of the new regulation.

DATES: Mandatory compliance with part 704, as published at 62 FR 12929 (March 19, 1997), is delayed until May 1, 1998.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Robert F. Schafer, Director, Office of Corporate Credit Unions, at the above address or telephone (703) 518–6640; or Edward Dupcak, Director, Office of Investment Services, at the above address or telephone (703) 518–6620.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–31503 Filed 12–3–97; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–05]

Removal of Class D Airspace, Marshall Army Airfield, Ft. Riley, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule which removed the Class D airspace area at Marshall Army Airfield, Ft. Riley, Kansas. The control tower at Marshall Army Airfield is not in operation and will not be operational in the foreseeable future.

EFFECTIVE DATE: The direct final rule published at 62 FR 17052 became effective 0901 UTC July 17, 1997.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 9, 1997 (62 FR 17052). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on July 17, 1997. No adverse comments were received, and thus this document confirms that the direct final rule became effective on that date.

Issued in Kansas City, MO, on October 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31706 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–22]

Amendment to Class E Airspace; St. Louis, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Lambert-St. Louis International Airport, St. Louis, MO. The FAA has developed an Instrument Landing System (ILS) Runway (RWY) 6 Standard Instrument Approach Procedure (SIAP) and a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) RWY 17 SIAP to serve the Lambert-St. Louis International Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs. The Class E airspace for St. Louis Regional, St. Charles County Smartt, and Spirit of St. Louis Airports are enlarged to conform to requirements of FAA Order 7400.2D. The intended effect of this rule is to provide Class E airspace for aircraft executing ILS RWY 6 and VOR/DME RWY 17 SIAPs, and to conform with the requirements of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC April 23, 1998.

Comment date: Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–22, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed ILS RWY 6 and VOR/

DME RWY 17 SIAPs at St. Louis, MO. Additional controlled Class E airspace extending upward from 700 feet AGL is needed at Lambert-St. Louis International Airport, MO, in order to contain the new SIAPs within controlled airspace. A review of airspace for St. Louis Regional, St. Charles County Smartt, and Spirit of St. Louis Airports indicates they do not meet the criteria for 700 feet AGL Class E airspace as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile increment. The areas for St. Louis Regional, St. Charles County Smartt, and Spirit of St. Louis are enlarged and included in the description of the amended Class E airspace for Lambert-St. Louis International Airport. The amended Class E airspace for Lambert-St. Louis International Airport will contain the new SIAPs in controlled airspace, comply with the requirements of FAA Order 7400.2D, and thereby facilitate separation of aircraft under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 should 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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 No. 97–ACE–22.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ACE MO E5 St. Louis, MO [Revised]

Lambert-St. Louis International Airport
(Lat. 38°44′52″N, long. 90°21′36″W)
Spirit of St. Louis Airport, MO
(Lat. 38°39′43″N, long. 90°39′00″W)
St. Louis Regional Airport, Alton, IL
(Lat. 38°53′25″N, long. 90°02′46″W)
St. Charles County Smartt Airport, St. Charles, MO
(Lat. 38°55′47″N, long. 90°25′48″W)
St. Louis VORTAC
(Lat. 38°51′39″N, long. 90°28′57″W)
Foristell VORTAC
(Lat. 38°41′40″N, long. 90°58′17″W)
ZUMAY LOM
(Lat. 38°47′17″N, long. 90°16′44″W)
OBLIO LOM
(Lat. 38°48′01″N, long. 90°28′29″W)
Civic Memorial NDB

(Lat. 38°53′32″N, long. 90°03′23″W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Lambert-St. Louis International Airport and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 12R ILS Localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 30L ILS localizer southeast course extending from the airport to 8.7 miles southeast of the airport and within a 6.8-mile radius of Spirit of St. Louis Airport and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6.8-mile radius area to 8.3 miles west of the airport and within a 6.4-mile radius of St. Charles County Smartt Airport, and within a 6.9-mile radius of St. Louis Regional Airport, and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from the 6.9-mile radius to 7 miles north of the airport and within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

* * * * *

Issued in Kansas City, MO, on October 17, 1997.

Herman J. Lyons,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31704 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–23]

Amendment to Class E Airspace; Crete, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Crete Municipal Airport, Crete, NE. A review of the airspace for Crete Municipal Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. This amendment to the Class E airspace at Crete, NE, excludes the Class E airspace within the Lincoln and Seward, NE, airspace. The intended effect of this rule is to provide controlled Class E airspace in accordance with FAA Order 7400.2D, and exclude the Class E airspace at Crete, NE, from Class E airspace at Lincoln and Seward, NE.

DATES: *Effective date:* 0901 UTC, April 23, 1998.

Comment date: Comments must be received on or before January 25, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–23, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: A review of the airspace for Crete Municipal Airport indicates it does not meet the criteria for 700 feet AGL Class E airspace as required in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. The amendment to Class E airspace at Crete, NE, will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 should 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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 No. 97–ACE–23.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ACE NE E5 Crete, NE [Revised]

Crete Municipal Airport, NE

(Lat. 40°37′07″ N., long. 96°55′32″ W.)
Crete NDB
(Lat. 40°37′27″ N., long. 96°55′39″ W.)
Lincoln VORTAC
(Lat. 40°55′26″ N., long. 96°44′31″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Crete Municipal Airport and within 2.6 miles each side of the 016° bearing from the Crete NDB extending from the 6.4-mile radius to 7.4 miles north of the airport and within 2.6 miles each side of the 172° bearing from the Crete NDB extending from the 6.4-mile radius to 7.4 miles south of the airport and within 2.6 miles each side of the 205° radial of the Lincoln VORTAC extending from the 6.4-mile radius to 7.9 miles southwest of the airport, excluding that airspace within the Lincoln, NE, Class E5 airspace and the Seward, NE, Class E5 airspace.

* * * * *

Issued in Kansas City, MO, on October 17, 1997.

Herman J. Lyons,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31703 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–26]

Amendment to Class E Airspace; Atchison, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Amelia Earhart Airport, Atchison, KS. A review of the airspace for Amelia Earhart Airport indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. The FAA has developed a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Runway (RWY) 16 Standard Instrument Approach Procedure (SIAP) to serve the Amelia Earhart Airport. Additional controlled airspace 700 feet AGL is needed to accommodate this SIAP and comply with the criteria of FAA Order 7400.2D. The enlarged area will contain the new VOR/DME RWY 16 SIAP in controlled airspace and comply with the requirements of FAA Order 7400.2D. The intended effect of this rule is to provide Class E airspace for instrument operations and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, April 23, 1998.

Comment date: Comments must be received on or before January 26, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Airspace Docket Number 97–ACE–26, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a VOR/DME RWY 16 SIAP to serve the Amelia Earhart Airport, Atchison, KS. The amendment to Class E airspace at Atchison, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The amendment will comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an

adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 should identify the Rules Document 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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 Airspace Docket No. 97–ACE–26.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1950–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ACE KS E5 Atchison, KS [Revised]

Amelia Earhart Airport, KS
(Lat. 39°34′14″ N., long. 95°10′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Amelia Earhart Airport.

* * * * *

Issued in Kansas City, MO, on October 7, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31702 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–27]

Amendment to Class E Airspace; Lexington, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Lexington/Jim Kelly Field, Lexington, NE. A review of the airspace for Lexington/Jim Kelly Field indicates it does not meet the criteria for 700 feet Above Ground Level (AGL) Class E airspace as required in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to comply with FAA Order 7400.2D and provide controlled Class E airspace for aircraft executing instrument approaches. Editorial revisions have been made to reflect a change in the airport name and ARP.

DATES: *Effective date:* 0901 UTC, April 23, 1998. *Comment date:* Comments must be received on or before January 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Airspace Docket Number 97–ACE–27, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: A review of the airspace for Lexington/Jim Kelly

Field indicates it does not meet the criteria for 700 feet AGL Class E airspace as required by FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile, plus the distance to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment to Class E airspace at Lexington, NE, will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under IFR. The name of the airport has been changed from Lexington Municipal Airport to Lexington/Jim Kelly Field. The ARP coordinates have been revised. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 should 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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 Airspace Docket No. 97–ACE–27.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ACE NE E5 Lexington, Lexington/Jim Kelly Field, NE [Revised]

Lexington/Jim Kelly Field, NE
(Lat. 40°47′26″ N., long. 99°46′33″ W.)
Darr NDB
(Lat. 40°50′40″ N., long. 99°51′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Lexington/Jim Kelly Field and within 2.6 miles each side of the 311° bearing from the Darr NDB extending from the 6.6-mile radius to 7 miles northwest of the NDB.

* * * * *

Issued in Kansas City, MO, on October 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 97–31701 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 401

Rules of Practice and Procedure; Amendments to Administrative Manual—Rules of Practice and Procedure

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its November 19, 1997 business meeting, the Delaware River Basin Commission amended its Administrative Manual—Rules of Practice and Procedure for clarification and conformance with existing Commission interpretations and practices.

EFFECTIVE DATE: November 19, 1997.

ADDRESSES: Copies of the Commission's Administrative Manual—Rules of Practice and Procedure are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION: On October 22, 1997 the Commission held a public hearing on proposed amendments to its Rules of Practice and Procedure as noticed in the **Federal Register**, Vol. 62, No. 168, August 29, 1997 and Vol. 62, No. 200, October 16, 1997. In response to comments received on that proposal, the Commission made several modifications to its initial proposal, providing further clarification, correcting typographical errors and revising language concerning assessment of Hearing costs.

List of Subjects in 18 CFR Part 401

Administrative practice and procedure, Environmental impact statements, Freedom of information, Water pollution control, Water resources.

18 CFR Part 401 is amended as follows:

SUBCHAPTER A—ADMINISTRATIVE MANUAL

PART 401—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 401 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

2. Section 401.0 Introduction is revised to read as follows:

§ 410.0 Introduction.

(a) The Delaware River Basin Compact requires the Commission to formulate and adopt a Comprehensive Plan and Water Resources Program. In addition, the Compact provides in Section 3.8 that no project having a substantial effect on the water resources of the Basin shall be undertaken unless it shall have been first submitted to and approved by the Commission. The Commission is required to approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan. Section 3.8 further provides that the Commission shall provide by regulation for the procedure of submission, review and consideration of projects and for its determinations pursuant to Section 3.8.

(b) The Comprehensive Plan consists of all public and those private projects and facilities which the Commission has directed be included therein. It also includes those documents and policies which the Commission has determined should be included with the Comprehensive Plan as being needed to insure optimum planning, development, conservation, use, management and control of the water resources of the Delaware Basin to meet present and future needs. The Comprehensive Plan is subject to periodic review and revision as provided in Sections 3.2 and 13.1 of the Compact.

(c) The Water Resources Program is based upon the Comprehensive Plan. It is required to be updated annually and to include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the Commission may determine, balanced by existing and proposed projects required to satisfy such needs. The Commission's review and modification of the Water Resources Program is conducted pursuant to the provisions of Articles 3.2 and 13.2 of the Compact.

(d) The Commission's Rules of Practice and Procedure govern the adoption and revision of the Comprehensive Plan, the Water Resources Program, the exercise of the Commission's authority pursuant to the provisions of Article 3.8 and other actions of the Commission mandated or authorized by the Compact.

(e) These Rules of Practice and Procedure extend to the following areas of Commission responsibility and regulation:

Article 1—Comprehensive Plan.
Article 2—Water Resources Program.
Article 3—Project Review Under Section 3.8 of the Compact.
Article 4—(Reserved).
Article 5—Appeals or Objections to Decisions of the Executive Director in Water Quality Cases.
Article 6—Administrative and Other Hearings.
Article 7—Penalties and Settlements in Lieu of Penalties.
Article 8—Public Access to the Commission's Records and Information.
Article 9—General Provisions.

(f) These rules are subject to Commission revision and modification from time to time as the Commission may determine. The Commission reserves the right to waive any Rule of Practice and Procedure it determines should not be applicable in connection with any matter requiring Commission action. All actions by the Commission, however, shall comply fully with the applicable provisions of the Compact.

3. Subpart A—Comprehensive Plan is revised to read as follows:

Subpart A—Comprehensive Plan

Sec.
401.1 Scope.
401.2 Concept of the Plan.
401.3 Other agencies.
401.4 Project applications and proposed revisions and changes.
401.5 Review of applications.
401.6 Proposed revisions and changes.
401.7 Further action.
401.8 Public Projects under Article 11 of the Compact.
401.9 Custody and availability.

§ 401.1 Scope.

This subpart shall govern the submission, consideration, and inclusion of projects into the Comprehensive Plan.

§ 401.2 Concept of the Plan.

(a) The Comprehensive Plan shall be adopted, revised and modified as provided in Sections 3.2 and 13.1 of the Compact. It is the Commission's responsibility to adopt the Comprehensive Plan, after consultation with water users and interested public bodies, for the immediate and long-range development and uses of the water resources of the Basin. The Plan shall include the public and private projects and facilities which the Commission determines are required for the optimum planning, development, conservation, utilization, management and control of the water resources of the Basin to meet present and future needs. In addition to the included projects and facilities, the Comprehensive Plan consists of the statements of policies, and programs that the Commission determines are necessary to govern the proper development and use of the River Basin. The documents within the Comprehensive Plan expressing the

Commission's policies and programs for the future, including the means for carrying them out, may be set forth through narrative text, maps, charts, schedules, budgets and other appropriate means.

(b) Specific projects and facilities and statements of policy and programs may be incorporated, deleted or modified from time to time to reflect changing conditions, research results and new technology. The degree of detail described in particular projects may vary depending upon the status of their development.

§ 401.3 Other agencies.

Projects of the federal agencies affecting the water resources of the Basin, subject to the limitations in Section 1.4 of the Compact, shall be governed by Section 11.1 of the Compact. Projects of the signatory states, their political subdivisions and public corporations affecting the water resources of the Basin, shall be governed by the provisions of Section 11.2 of the Compact.

§ 401.4 Project applications and proposed revisions and changes.

(a) Applications for inclusion of new public projects and the deletion or alteration of previously included public projects may be submitted by signatory parties and agencies or political subdivisions thereof. Owners or sponsors of privately owned projects may submit applications for the inclusion of new private projects and the deletion or alteration of previously included private projects in which the applicant has an interest. The Commission may also receive and consider proposals for changes and additions to the Comprehensive Plan which may be submitted by any agency of the signatory parties, or any interested person, organization, or group. Any application or proposal shall be submitted in such form as may be required by the Executive Director to facilitate consideration by the Commission.

(b) Applications for projects shall include at least the following information:

(1) Purpose or purposes, including quantitative measures of physical benefit anticipated from the proposal;

(2) The location, physical features and total area required.

(3) Forecast of the cost or effect on the utilization of water resources;

(4) Relation to other parts of the existing Comprehensive Plan;

(5) A discussion of conformance with Commission policies included in the Comprehensive Plan; and

(6) A discussion of the alternatives considered.

§ 401.5 Review of applications.

Following staff study, examination, and review of each project application, the Commission shall hold a public hearing upon notice thereon as provided in paragraph 14.4(b) of the Compact and may take such action on a project application as it finds to be appropriate.

§ 401.6 Proposed revisions and changes.

Proposals for changes and additions to the Comprehensive Plan submitted by any agency of the signatory parties or any interested person, organization or group shall identify the specific revision or change recommended. In order to permit adequate Commission consideration of any proposal, the Executive Director may require such additional information as may be needed. Review or consideration of such proposals shall be based upon the recommendation of the Executive Director and the further direction of the Commission.

§ 401.7 Further action.

The Commission will review the Comprehensive Plan in its entirety at least once every six years from the date of the initial adoption of the Comprehensive Plan (March 28, 1962). Such review may include consideration of proposals submitted by the signatory parties, agencies or political subdivision thereof or other interested parties. The amendments, additions, and deletions adopted by the Commission will be compiled and the Plan as so revised shall be made available for public inspection.

§ 401.8 Public Projects under Article 11 of the Compact.

(a) After a project of any federal, state or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and this part. Any project which is changed substantially from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director who will determine whether the change is deemed substantial within the meaning of this part.

(b) Any public project not having a substantial effect on the water resources of the Basin, as defined in subpart C of this part, may proceed without reference to Article 11 of the Compact.

§ 401.9 Custody and availability.

The Comprehensive Plan shall be and remain in the custody of the Executive Director. The Plan, including all maps, charts, description and supporting data shall be and remain a public record open to examination during the regular business hours of the Commission, under such safeguards as the Executive Director may determine to be necessary to preserve and protect the Plan against loss, damage or destruction. Copies of the Comprehensive Plan or any part or parts thereof shall be made available by the Executive Director for public sale at a price covering the cost of production and distribution.

4. Subpart C—Project Review Under Section 3.8 of the Compact is revised to read as follows:

Subpart C—Project Review Under Section 3.8 of the Compact

Sec.
401.31 Scope.
401.32 Concept of 3.8.
401.33 Administrative agreements.
401.34 Submission of project required.
401.35 Classification of projects for review under Section 3.8 of the Compact.
401.36 Water supply projects—Conservation requirements.
401.37 Sequence of approval.
401.38 Form of referral by State or Federal agency.
401.39 Form of submission of projects not requiring prior approval by State or Federal agencies.
401.40 Informal conferences and emergencies.
401.41 Limitation of approval.

§ 401.31 Scope.

This subpart shall govern the submission and review of projects under Section 3.8 of the Delaware River Basin Compact.

§ 401.32 Concept of 3.8.

Section 3.8 is intended to protect and preserve the integrity of the Comprehensive Plan. This section of the Compact provides:

"No project having a substantial effect on the water resources of the basin shall hereafter be undertaken by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the Commission, subject to the provisions of Sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the Comprehensive Plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such Plan. The Commission shall provide by regulation for the procedure of submission,

review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction.''

§ 401.33 Administrative agreements.

The Executive Director is authorized and directed to enter into cooperative Administrative Agreements with federal and state regulatory agencies concerned with the review of projects under federal or state law as follows:

(a) To facilitate the submission and review of applications and the determinations required under Section 3.8 of the Compact;

(b) To avoid unnecessary duplication of staff functions and hearings required by law; and

(c) For such other and different purposes as he may deem feasible and advantageous for the administration of the Compact or any other law.

§ 401.34 Submission of project required.

Any project which may have a substantial effect on the water resources of the Basin, except as provided in paragraph (d) of this section, shall be submitted to the Commission for a determination as to whether the project impairs or conflicts with the Comprehensive Plan, as follows:

(a) Where the project is subject to review by a state or federal agency which has entered into an Administrative Agreement with the Commission, such project will be referred to the Commission in accordance with the terms of the Administrative Agreement, and appropriate instructions will be prepared and issued by the Executive Director for guidance of project sponsors and applicants.

(b) Where no other state or federal agency has jurisdiction to review and approve a project, or no Administrative Agreement is in force, the project sponsor shall apply directly to the Commission.

(c) Any project proposal, which may have a substantial effect on the water resources of the Basin, may be received and reviewed by the staff informally in conference with the project sponsor during the preliminary planning phase to assist the sponsor to develop the project in accordance with the Commission's requirements.

(d) Whenever a project sponsored by one of the signatory parties, or by any agency, political subdivision or public corporation thereof, has been included in the Water Resources Program in the ''A List'' classification, the project, to the extent of such inclusion and as described in the Program, shall be deemed approved for the purposes of Section 3.8 of the Compact.

(e) Whenever a project is subject to review and approval by the Commission under this section, there shall be no substantial construction activity thereon, including related preparation of land, unless and until the project has been approved by the Commission; provided, however, that this prohibition shall not apply to the drilling of wells for purposes of obtaining geohydrologic data, nor to in-plant control and pretreatment facilities for pollution abatement.

§ 401.35 Classification of projects for review under Section 3.8 of the Compact.

(a) Except as the Executive Director may specially direct by notice to the project owner or sponsor, or as a state or federal agency may refer under paragraph (c) of this section, a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

(1) The construction of new impoundments or the enlargement or removal of existing impoundments, for whatever purpose, when the storage capacity is less than 100 million gallons;

(2) A withdrawal from ground water for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

(3) A withdrawal from impoundments or running streams for any purpose when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

(4) The construction of new domestic sewage treatment facilities or alteration or addition to existing domestic sewage treatment facilities when the design capacity of such facilities is less than a daily average rate of 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; and all local sewage collector systems and improvements discharging into authorized trunk sewage systems;

(5) The construction of new facilities or alteration or addition to existing facilities for the direct discharge to surface or ground waters of industrial wastewater having design capacity of less than 10,000 gallons per day in the drainage area to Outstanding Basin Waters and Significant Resource Waters or less than 50,000 gallons per day elsewhere in the Basin; except where such wastewater contains toxic concentrations of waste materials;

(6) A change in land cover on major ground water infiltration areas when the amount of land that would be altered is less than three square miles;

(7) Deepening, widening, cleaning or dredging existing stream beds or relocating any channel, and the placement of fill or construction of dikes, on streams within the Basin except the Delaware River and tidal portions of tributaries thereto, and streams draining more than one state;

(8) Periodic maintenance dredging;

(9) Encroachments on streams within the Basin caused by:

(i) Floating docks and anchorages and buoys and navigational aids;

(ii) Temporary construction such as causeways, cofferdams and falsework required to facilitate construction on permanent structures;

(10) Bridges and highways unless they would pass in or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan;

(11) Liquid petroleum products pipelines and appurtenances designed to operate under pressures less than 150 psi; local electric distribution lines and appurtenances; local communication lines and appurtenances; local natural and manufactured gas distribution lines and appurtenances; local water distribution lines and appurtenances; and local sanitary sewer mains, unless such lines would involve significant disturbance of ground cover affecting water resources;

(12) Electric transmission or bulk power system lines and appurtenances; major trunk communication lines and appurtenances; natural and manufactured gas transmission lines and appurtenances; major water transmission lines and appurtenances; unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan; unless such lines would involve significant disturbance of ground cover affecting water resources;

(13) Liquid petroleum products pipelines and appurtenances designed to operate under pressures of more than 150 psi, unless they would pass in, on, under or across an existing or proposed reservoir or recreation project area as designated in the Comprehensive Plan, or in, on, under or across any stream within the Basin; unless such lines would involve significant disturbance of ground cover affecting water resources;

(14) Landfill projects, unless no state-level review and permit system is in effect; broad regional consequences are

anticipated; or the standards or criteria used in state level review are not adequate to protect the water of the Basin for the purposes prescribed in the Comprehensive Plan;

(15) Draining, filling or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided; however, that areas less than 25 acres shall be subject to Commission review and action;

(i) Where neither a state nor a federal level review and permit system is in effect, and the Executive Director determines that a project is of major regional or interstate significance requiring action by the Commission, or

(ii) When a Commissioner or the Executive Director determines that the final action of a state or federal permitting agency may not adequately reflect the Commission's policy as to wetlands of the Basin. In the case of a project affecting less than 25 acres for which there has been issued a state or federal permit, a determination to undertake review and action by the Commission shall be made no later than 30 days following notification of the Commission of such permit action. The Executive Director, with the approval of the Chairman, may at any time within the 30-day period inform any permit holder, signatory party or other interested party that the Commission will decline to undertake review and action concerning any such project;

(16) The diversion or transfer of water from the Delaware River Basin (exportation) whenever the design capacity is less than a daily average rate of 100,000 gallons;

(17) The diversion or transfer of water into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 100,000 gallons except when the imported water is wastewater;

(18) The diversion or transfer of wastewater into the Delaware River Basin (importation) whenever the design capacity is less than a daily average rate of 50,000 gallons; and

(19) Temporary or short term projects determined to have non-substantial impact on the water resources of the Basin by the Executive Director.

(b) All other projects which have or may have a substantial effect on the water resources of the Basin shall be submitted to the Commission in accordance with this part for determination as to whether the project impairs or conflicts with the Comprehensive Plan. Among these are projects involving the following (except as provided in paragraph (a) of this section):

(1) Impoundment of water;

(2) Withdrawal of ground water;

(3) Withdrawal of water from impoundment or streams;

(4) Diversion of water into or out of the Basin;

(5) Deepening or widening of existing stream beds, channels, anchorages, harbors or tuning basins, or the construction of new or enlarged channels, anchorages, harbors or turning basins, or the dredging of the bed of any stream or lake and disposal of the dredged spoil, when the nature or location of the project would affect the quantity or quality of ground or surface waters, or fish and wildlife habitat;

(6) Discharge of pollutants into surface or ground waters of the Basin;

(7) Facilities designed to intercept and transport sewage to a common point of discharge; and pipelines and electric power and communication lines;

(8) Facilities for the direct discharge to surface or ground waters of industrial wastewater;

(9) Projects that substantially encroach upon the stream or upon the 100-year flood plain of the Delaware River or its tributaries;

(10) Change in land cover on major ground water infiltration areas;

(11) Hydroelectric power projects, including pumped storage projects;

(12) Projects or facilities of Federal, state and local agencies such as highways, buildings and other public works and improvements, affecting the water and related land resources of the Basin;

(13) Draining, filling or otherwise altering marshes or wetlands;

(14) Regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act;

(15) Landfills and solid waste disposal facilities affecting the water resources of the Basin;

(16) State and local standards of flood plain regulation;

(17) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period; and

(18) Any other project that the Executive Director may specify direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

(c) Whenever a state or federal agency determines that a project falling within an excluded classification (as defined in paragraph (a) of this section) may have a substantial effect on the water resources of the Basin, such project may be referred by the state of federal agency to the Commission for action under this part.

(d) Except as otherwise provided by § 401.39 the sponsor shall submit an application for review and approval of a project included under paragraph (b) of this section through the appropriate agency of a signatory party. Such agency will transmit the application or a summary thereof to the Executor, pursuant to Administrative Agreement, together with available supporting materials filed in accordance with the practice of the agency of the signatory party.

§ 401.36 Water supply projects—Conservation requirements.

Maximum feasible efficiency in the use of water is required on the part of water users throughout the Basin. Effective September 1, 1981 applications under Section 3.8 of the Compact for new water withdrawals subject to review by the Commission shall include and describe water-conserving practices and technology designed to minimize the use of water by municipal, industrial and agricultural users, as provided in this section.

(a) Applications for approval of new withdrawal from surface or ground water sources submitted by a municipality, public authority or private water works corporation whose total average withdrawals exceed one million gallons per day shall include or be in reference to a program prepared by the applicant consisting of the following elements:

(1) Periodic monitoring of water distribution and use, and establishment of a systematic leak detection and control program;

(2) Use of the best practicable water-conserving devices and procedures by all classes of users in new construction or installations, and provision of information to all classes of existing users concerning the availability of water-conserving devices and procedures; and

(3) A contingency plan including use priorities and emergency conservation measures to be instituted in the event of a drought or other water shortage condition. Contingency plans of public authorities or private water works corporations shall be prepared in cooperation with, and made available to, all municipalities in the area affected by the contingency plan, and shall be coordinated with any applicable statewide water shortage contingency plans.

(b) Programs prepared pursuant to paragraph (a) of this section shall be subject to any applicable limitations of public utility regulations of the

signatory party in which the project is located.

(c) Applications for approval of new industrial or commercial water withdrawals from surface or ground water in excess of an average of one million gallons per day shall contain

(1) A report of the water-conserving procedures and technology considered by the applicant, and the extent to which they will be applied in the development of the project; and

(2) A contingency plan including emergency conservation measures to be instituted in the event of a drought or other water shortage. The report and contingency plan shall estimate the impact of the water conservation measures upon consumptive and non-consumptive water use by the applicant.

(d) Applications for approval of new agricultural irrigation water withdrawals from surface or ground water sources in excess of one million gallons per day shall include a statement of the operating procedure or equipment to be used by the applicant to achieve the most efficient method of application of water and to avoid waste.

(e) Reports, programs and contingency plans required under this section shall be submitted by the applicant as part of the permit application to the state agency having jurisdiction over the project, or directly to the Commission in those cases where the project is not subject to the jurisdiction of a state agency. State agencies having jurisdiction over a project that is subject to the provisions of this section shall determine the adequacy and completeness of the applicant's compliance with these requirements and shall advise the Commission of their findings and conclusions.

§ 401.37 Sequence of approval.

A project will be considered by the Commission under Section 3.8 of the Compact either before or after any other state or federal review, in accordance with the provisions of the Administrative Agreement applicable to such project.

§ 401.38 Form of referral by State or Federal agency.

Upon approval by any State or Federal agency of any project reviewable by the Commission under this part, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under Section 3.8 of the Compact in such form and manner as shall be provided by Administrative Agreement.

(a) The Commission will rely on the appropriate agency in each state to review and regulate the potability of all public water supplies. Applications before the Commission should address the impact of the withdrawal, use and disposal of water on the water resources of the Basin.

(b) The Commission will rely on signatory party reviews as much as possible and generally the Commission will not review the performance standards of individual components of treatment processes but will require compliance with all policies in the Comprehensive Plan including all applicable Water Quality Standards.

§ 401.39 Form of submission of projects not requiring prior approval by State or Federal agencies.

Where a project does not require approval by any other State or Federal agency, or where such approval is required but an Administrative Agreement is not in force, the project shall be submitted directly to the Commission for review and determination of compatibility with the Comprehensive Plan, in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the Compact. These shall include without limitation thereto:

(a) *Exhibits to accompany application.* The application shall be accompanied by the following exhibits:

(1) Abstract of proceedings authorizing project, where applicable;

(2) General map showing specific location and dimension of a structural project, or specific language of a standard or policy in the case of a non-structural proposal;

(3) Section of the United States Geological Survey topographic map showing the territory and watershed affected;

(4) Maps, drawings, specifications and profiles of any proposed structures, or a description of the specific effects of a non-structural project;

(5) Written report of the applicant's engineer showing the proposed plan of operation of a structural project;

(6) Map of any lands to be acquired or occupied;

(7) Estimate of the cost of completing the proposed project, and sufficient data to indicate a workable financial plan under which the project will be carried out; and

(8) Analyses and conclusions of regional water supply and wastewater investigations.

(b) *Letter of transmittal.* The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures, the names and addresses to which communications may be directed to the applicant, and the names and addresses of the applicant's engineer and counsel, if any.

(c) Unless otherwise ordered by the Commission, two copies of the application and accompanying papers shall be filed. If any application is contested, the Commission may require additional copies of the application and all accompanying papers to be furnished by the applicant. In such cases, certified copies of photographic prints or reproduction may be used.

§ 401.40 Informal conferences and emergencies.

(a) Whenever the Executive Director shall deem necessary, or upon request of the applicant, an informal conference may be scheduled to explain, supplement or review an application.

(b) In the event of an emergency requiring immediate action to protect the public interest or to avoid substantial and irreparable injury to any private person or property, and the circumstances do not permit a review, hearing and determination in the regular course of the regulations in this part, the Executive Director with the approval of the chairman of the Commission may issue an emergency certificate authorizing an applicant to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review, hearing and determination by the Commission as otherwise required in this part.

§ 401.41 Limitation of approval.

(a) Approval by the Commission under this part shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.

(b) Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated. Any renewed activity following that date will require submission of a new application.

Subpart D—[Removed and Reserved.]

5. Subpart D is removed and reserved.

6. Subpart E is revised to read as follows:

Subpart E—Review in Water Quality Cases

Sec.
401.71 Scope.
401.72 Notice and request for hearing.
401.73 Form of request.
401.74 Form and contents of report.

401.75 Protection of trade secrets; Confidential information.
401.76 Failure to furnish report.
401.77 Informal conference.
401.78 Consolidation of hearings.

§ 401.71 Scope.

This subpart shall apply to the review, hearing and decision of objections and issues arising as a result of administrative actions and decisions taken or rendered by the Executive Director under the Compact and the regulations in this chapter. Any hearings shall be conducted pursuant to the provisions of subpart F of this part.

§ 401.72 Notice and request for hearing.

The Executive Director shall serve notice of an action or decision by him under the Compact and the regulations in this chapter by personal service or certified mail, return receipt requested. The affected discharger shall be entitled (and the notice of action or decision shall so state) to show cause at a Commission hearing why such action or decision should not take effect. A request for such a hearing shall be filed with the Secretary of the Commission not more than 30 days after service of the Executive Director's determination. Failure to file such a request within the time limit shall be deemed to be an acceptance of the Executive Director's determination and a waiver of any further hearing.

§ 401.73 Form of request.

(a) A request for a hearing may be informal but shall indicate the name of the individual and the address to which an acknowledgment may be directed. It may be stated in such detail as the objector may elect. The request shall be deemed filed only upon receipt by the Commission.

(b) When the Executive Director determines that the request for a hearing is insufficient to identify the nature and scope of the objection, or that one or more issues may be resolved, reduced or identified by such action, he may require the objector to prepare and submit to the Commission, within such reasonable time (not less than 30 days) as he may specify, a technical report of the facts relating to the objection prior to the scheduling of the hearing. The report shall be required by notice in writing served upon the objector by certified mail, return receipt requested, addressed to the person or entity filing the request for hearing at the place indicated in the request.

§ 401.74 Form and contents of report.

(a) *Generally.* A request for a report under this subpart may require such information and the answers to such questions as may be reasonably pertinent to the subject of the action or determination under consideration.

(b) *Waste loading.* In cases involving objections to an allocation of the assimilative capacity of a stream, wasteload allocation for a point source, or load allocation for a new point source, the report shall be signed and verified by a technically qualified person having personal knowledge of the facts stated therein, and shall include such of the following items as the Executive Director may require:

(1) A specification with particularity of the ground or grounds for the objection; and failure to specify a ground for objection prior to the hearing shall foreclose the objector from thereafter asserting such a ground at the hearing;

(2) A description of industrial processing and waste treatment operational characteristics and outfall configuration in such detail as to permit an evaluation of the character, kind and quantity of the discharges, both treated and untreated, including the physical, chemical and biological properties of any liquid, gaseous, solid, radioactive, or other substance composing the discharge in whole or in part;

(3) The thermal characteristics of the discharges and the level of heat in flow;

(4) Information in sufficient detail to permit evaluation in depth of any in-plant control or recovery process for which credit is claimed;

(5) The chemical and toxicological characteristics including the processes and/or indirect discharges which may be the source of the chemicals or toxicity;

(6) An analysis of all the parameters that may have an effect on the strength of the waste or impinge upon the water quality criteria set forth in the Compact and the regulations in this chapter, including a determination of the rate of biochemical oxygen demand and the projection of a first-stage carbonaceous oxygen demand;

(7) Measurements of the waste as closely as possible to the processes where the wastes are produced, with the sample composited either continually or at frequent intervals (one-half hour or, where permitted by the Executive Director, one hour periods), so as to represent adequately the strength and volume of waste that is discharged; and

(8) Such other and additional specific technical data as the Executive Director may reasonably consider necessary and useful for the proper determination of a wasteload allocation.

§ 401.75 Protection of trade secrets; Confidential information.

No person shall be required in such report to divulge trade secrets or secret processes. All information disclosed to any Commissioner, agent or employee of the Commission in any report required by this part shall be confidential for the purposes of Section 1905 of Title 18 of the United States Code which provides:

> Whoever, being an officer or employee of the United States or of any department or agency thereof, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association; or permits any income return or copy thereof to be seen or examined by any persons except as provided by law; shall be fined not more than $1,000 or imprisoned not more than one year, or both; and shall be removed from office or employment. June 25, 1948, C.645, 62 Stat. 791.

§ 401.76 Failure to furnish report.

The Executive Director may, upon five days' notice to the objector dismiss the request for a hearing as to any objector who fails to file a complete report within such time as shall be prescribed in the Director's notice.

§ 401.77 Informal conference.

Whenever the Executive Director deems it appropriate, he may cause an informal conference to be scheduled between an objector and such member of the Commission staff as he may designate. The purpose of such a conference shall be to resolve or narrow the ground or grounds of the objections.

§ 401.78 Consolidation of hearings.

Following such informal conferences as may be held, to the extent that the same or similar grounds for objections are raised by one or more objectors, the Executive Director may in his discretion and with the consent of the objectors, cause a consolidated hearing to be scheduled at which two or more objectors asserting that ground may be heard.

7. Subpart F is revised to read as follows:

Subpart F—Administrative and Other Hearings

Sec.
401.81 Hearings generally.
401.82 Authorization to conduct hearings.

401.83 Hearing Officer.
401.84 Hearing procedure.
401.85 Staff and other expert testimony.
401.86 Record of proceedings.
401.87 Assessment of costs; Appeals.
401.88 Findings, report and Commission review.
401.89 Action by the Commission.
401.90 Appeals from final Commission action; Time for appeals.

§ 401.81 Hearings generally.

(a) *Scope of subpart.* This subpart shall apply to contested cases required to be held under subparts C and E of this part, to the conduct of other administrative hearings involving contested cases and to proceedings which Commission regulation or the Commission directs be conducted pursuant to this subpart.

(b) *Definition of contested case.* ''Contested case'' means a proceeding in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are involved. Such a proceeding may involve personnel matters, project applications and docket decisions but shall not extend to the review of any proposed or adopted rule or regulation of the Commission.

(c) *Requests for hearings.* Any person seeking a hearing to review the action or decision of the Commission or the Executive Director may request a hearing pursuant to the provisions of this subpart provided such a request is received by the Commission within thirty (30) days of the action or decision which is the subject of the requested hearing. Requests shall be submitted in writing to the Secretary of the Commission and shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing and a summary statement setting forth the basis for objecting to or seeking review of the action or decision. Any request filed more than thirty days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless the Commission by unanimous vote otherwise directs. Receipt of requests for hearings, pursuant to this subpart, whether timely filed or not, shall be submitted by the Secretary to the Commissioners for their information.

(d) *Optional joint hearings.* Whenever designated by a department, agency or instrumentality of a signatory party, and within any limitations prescribed by the designation, a Hearing Officer designated pursuant to this subpart may also serve as a Hearing Officer, examiner or agent pursuant to such additional designation and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a Hearing Officer shall cause to be filed with the department, agency or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the Hearing Officer nor the Delaware River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a signatory party (other than the Delaware River Basin Compact).

(e) *Schedule.* The Executive Director shall cause the schedule for each hearing to be listed in advance upon a ''hearing docket'' which shall be posted in public view at the office of the Commission.

(f) *Notice of hearing.* Notice of any hearing to be conducted pursuant to this subpart shall comply with the provisions of Section 14.4(b) of the Compact relating to public notice unless otherwise directed by the Commission.

§ 401.82 Authorization to conduct hearings.

(a) *Written requests for hearings.* Upon receipt of a written request for a hearing pursuant to this subpart, the Executive Director shall review the record available with regard to the action or decision for which a hearing is requested. Thereafter, the Executive Director shall present the request for a hearing to the Commission for its consideration. The Commission shall grant a request for a hearing pursuant to this subpart if it determines that an adequate record with regard to the action or decision ins not available, the contested case involves a determination by the Executive Director or staff which requires further action by the Commissioner that the Commission has found that an administrative hearing is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the Compact or other applicable law or court rule.

(b) *Commission directed hearings.* This subpart shall be applicable to any proceeding which Commission regulation or the Commission directs be conducted in accordance with the provisions, of this subpart.

§ 401.83 Hearing Officer.

(a) *Generally.* Hearings shall be conducted by one or more members of the Commission, by the Executive Director, or by such other Hearing Officer as the Chairman may designate, except as provided in paragraph (b) of this section.

(b) *Wasteload allocation cases.* In cases involving the allocation of the assimilative capacity of a stream:

(1) The Executive Director shall appoint a hearing board of at least two persons. One of them shall be nominated by the water pollution control agency of the state in which the discharge originates, and he shall be chairman. The board shall have and exercise the powers and duties of a Hearing Officer;

(2) A quorum of the board for purposes of the hearing shall consist of two members; and

(3) Questions of practice or procedure during the hearing shall be determined by the Chairman.

§ 401.84 Hearing procedure.

(a) *Participation in the hearing.* In any hearing, the person requesting the hearing shall be deemed an interested party and shall be entitled to participate fully in the hearing procedure. In addition, any person whose legal rights may be affected by the decision rendered in a contested case shall be deemed an interested party. Interested parties shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. In addition to interested parties, any persons having information concerning a contested case or desiring to present comments concerning the subject matter of the Hearing for inclusion in the record may submit a written statement to the Commission. Any interested party may request the right to examine or cross-examine any person who submits a written statement. In the absence of a request for examination of such person, all written statements submitted shall be included within the record and such statements may be relied upon to the extent determined by the Hearing Officer or the Commission.

(b) *Powers of the Hearing Officer.* The Hearing Officer shall:

(1) Rule upon offers of proof and the admissibility of evidence, regulate the course of the hearings, hold conferences for the settlement or simplification of procedures or issues, and shall schedule submission of documents, briefs and the time for the hearing.

(2) Cause each witness to be sworn or to make affirmation.

(3) Limit the number of times any witness may testify, limit repetitious examination or cross-examination of witnesses or the extent to which corroborative or cumulative testimony shall be accepted.

(4) Exclude irrelevant, immaterial or unduly repetitious evidence, but the interested parties shall not be bound by technical rules of evidence and all relevant evidence of reasonably probative value may be received.

(5) Require briefs and oral arguments to the extent determined necessary which shall be included as part of the record unless otherwise ordered by the Hearing Officer.

§ 401.85 Staff and other expert testimony.

(a) *Presentation on behalf of the Commission.* The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he may deem necessary or desirable, to incorporate in the record or support the administrative action, determination or decision which is the subject of the hearing.

(b) *Expert witnesses.* An interested party may submit in writing to the Hearing Officer the report and proposed testimony of an expert witness. No expert report or proposed testimony, however, shall be included in the record if the expert is not available for examination unless the report and proposed testimony shall have been provided to the Commission and all interested parties prior to the hearing and the Commission and interested parties have waived the right of cross-examination.

(c) The Executive Director may designate for inclusion in the record those records of the Commission which the Executive Director deems relevant to a decision in a contested case or to provide an understanding of applicable Commission policies, regulations or other requirements relating to the issues in the contested case. The designation of such Commission documents shall be provided to all interested parties prior to the hearing.

§ 401.86 Record of proceedings.

A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the applicant, objector, or any other person who is a party to these proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The applicant, objector, or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

§ 401.87 Assessment of costs; Appeals.

(a) Whenever a hearing is conducted under this subpart, the costs thereof, as defined in this subpart, shall be assessed by the Hearing Officer to the party requesting the hearing unless apportioned between the interested parties where cost sharing is deemed fair and equitable by the Hearing Officer. For the purposes of this section costs include all incremental costs incurred by the Commission, including, but not limited to, hearing examiner and expert consultants reasonably necessary in the matter, stenographic record, rental of a hearing room and other related expenses.

(b) Upon scheduling of a matter for hearing, the Secretary shall furnish to the applicant and/or interested parties a reasonable estimate of the costs to be incurred under this section. The applicant and/or interested parties may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a signatory state.

(c) An appeal of the assessment of costs may be submitted in writing to the Commission within ten (10) days of the assessment. A copy of the appeal shall be filed with the Secretary and served on all interested parties. The filing of said appeal shall not stay the Hearing.

§ 401.88 Findings, report and Commission review.

(a) The Hearing Officer shall prepare a report of his findings and recommendations. In the case of an objection to a waste load allocation, the Hearing Officer shall make specific findings of a recommended allocation which may increase, reduce or confirm the Executive Director's determination. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel unless all parties have waived service of the report. The applicant and any objector may file objections to the report within 20 days after the service upon him of a copy of the report. A brief shall be filed together with any objections. The report of the Hearing Officer together with objections and briefs shall be promptly submitted to the Commission. The Commission may require or permit oral argument upon such submission prior to its decision.

(b) The Executive Director, in addition to any submission to the Hearing Officer, may also submit to the Commission staff comments upon, or a response to, the Hearing Officer's findings and report and, where appropriate, a draft docket or other recommended Commission action. Interested parties shall be served with a copy of such submission and may have not less than ten (10) days to respond before action by the Commission.

§ 401.89 Action by the Commission.

(a) The Commission will act upon the findings and recommendations of the Hearing Officer pursuant to law.

(b) Commission Counsel shall assist the Commission with its review of the hearing record and the preparation of a Commission decision to the extent directed to do so by the Chairman.

(c) The determination of the Commission will be in writing and shall be filed together with any transcript of the hearing, report of the Hearing Officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing. All such records, papers and documents may be examined by any person at the office of the Commission, and shall not be removed therefrom except temporarily upon the written order of the Secretary after the filing of a receipt therefor in form prescribed by the Secretary. Copies of any such records and papers may be made in the office of the Commission by any person, subject to such reasonable safeguards for the protection of the records as the Executive Director may require.

§ 401.90 Appeals from final Commission action; Time for appeals.

Any party participating in a hearing conducted pursuant to the provisions of this subpart may appeal any final Commission action. To be timely, such an appeal must be filed with an appropriate federal court, as provided in Article 15.1(p) of the Commission's Compact, within forty-five (45) days of final Commission action.

Dated: November 21, 1997.

Susan M. Weisman,

Secretary.

[FR Doc. 97–31486 Filed 12–3–97; 8:45 am]

BILLING CODE 6360–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 255

RIN 3220–AA44

Recovery of Overpayments

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) revises part 255 of its regulations, currently entitled ''Recovery of Erroneous Payments'', to clarify and update its regulations with respect to recovery of overpayments. The revisions more clearly identify the individuals from whom recovery may be sought and under what circumstances recovery of an overpayment of benefits will be made. The revisions also cover the circumstances under which such recovery may be waived, and the circumstances under which such recovery may be terminated or suspended under the Board's authority concerning administrative relief from recovery.

DATE: Effective December 4, 1997.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Part 255 of the Board's regulations has not been revised since 1967. Although section 10 of the Railroad Retirement Act of 1974 (45 U.S.C. 231i) includes provisions for recovery and waiver of overpayments of benefits which are substantially the same provisions included in the Railroad Retirement Act of 1937 (45 U.S.C. 228i, superseded), internal procedures dealing with overpayments of benefits have been developed which should properly be included in the regulations of the Board. In addition, in the Board's view, waiver should not be available with respect to certain types of overpayments and this proposed rule reflects those proposals.

The title of part 255 is revised to ''Recovery of Overpayments''. The title, ''Recovery of Erroneous Payments'', mistakenly implies that all such payments were caused by ''fault''. Overpayments can and do occur through no fault of the recipients of such payments. The purpose of part 255 is to set out regulations to govern those instances where more than the correct amount of benefits has been paid, regardless of whether or not ''fault'' exists.

Section 255.1 replaces previous § 255.1, which sets out statutory provisions, with an introductory statement to summarize what is included in part 255.

Section 255.2 defines ''overpayment'' using essentially the same language that is used in previous § 255.2 which defined ''erroneous payments''.

Section 255.3 states the general rule that overpayments shall be recovered in all cases except where recovery is waived under § 255.10 or administrative relief from recovery is granted under § 255.16 or where collection is suspended or terminated under these regulations or the Federal Claims Collection Standards.

Section 255.4 replaces previous § 255.4, which simply stated in a summary manner the methods by which erroneous payments may be recovered, with a detailed description of those individuals from whom overpayments may be recovered.

Sections 255.5–255.8 set out the methods by which an overpayment of benefits may be recovered. These methods include recovery by cash payment (§ 255.5), recovery by setoff from any subsequent payment determined to be payable on the basis of the same record of compensation (§ 255.6), recovery by deduction in the computation of a residual lump-sum death benefit payable under the Railroad Retirement Act (§ 255.7), and recovery by actuarial adjustment of an annuity (§ 255.8). These sections are substantially similar to previous §§ 255.5–255.8. However, § 255.8, unlike its predecessor, provides that an actuarial adjustment is not effective until the overpaid annuitant negotiates the first check which reflects the actuarially adjusted rate.

Section 255.9 provides that where recovery of an overpayment is by setoff which can be effected within 5 months and the individual from whom recovery is sought is an enrollee under Medicare Part B, the individual's monthly Medicare premium will be paid and the balance of the annuity amount will be applied toward recovery of the overpayment. This section is new and is intended both to save the agency the administrative costs of billing an annuitant for his or her Part B Medicare premium where his or her annuity would be offset in its entirety to recover an overpayment and also to avoid a lapse of Medicare coverage.

Section 255.10 sets out the general requirements for waiver of recovery of an overpayment as set forth in the Railroad Retirement Act and replaces the present §§ 255.10 and 255.11.

Section 255.11 defines ''fault'' and gives examples of when an individual is or is not at fault based upon past agency decisions. Section 255.12 defines when recovery is contrary to the purpose of the Railroad Retirement Act, based upon past agency decisions. Section 255.13 defines when recovery is against equity or good conscience.

Sections 255.14 and 255.15 are new sections which describe special situations where waiver of recovery of an overpayment is not available or is limited. Specifically, § 255.14 provides that waiver is not available under certain circumstances when recovery can be made from an accrual of social security benefits. Section 255.15 provides that when considering waiver to an estate of an individual, recovery will never be found to be contrary to the purpose of the Railroad Retirement Act.

Section 255.16 sets out internal Board policy governing those situations where recovery of an overpayment may not be waived under section 10(c) of the Railroad Retirement Act, thus extinguishing the debt, but where recovery will not be sought for equitable reasons.

Section 255.17 is new and explains how an overpayment is recovered when that overpayment was made to a representative payee under part 266 of this chapter.

Sections 255.18 and 255.19, which deal with compromise, suspension, or termination of the collection of overpayments are substantively identical to previous §§ 255.14 and 255.15 with the exception that references to the Federal Claims Collection Standards (4 CFR Chapter 2) have been added.

This rule was published as a proposed rule on December 28, 1995, (60 FR 67108). The Labor Member of the Board dissented from publication of the proposed rule. His reasons for doing so were published in the supplementary information section of the proposed rule (60 FR 67109). Comments on the proposed rule were invited by January 29, 1996.

Four comments were received; one from an individual, two from individuals representing railway labor organizations and one from an association of retired railroad workers. All of the commenters expressed agreement with the views of the Labor Member set forth in the proposed rule. (60 FR 67109). In addition, the Board received the joint comments of rail labor and rail management.

Two commenters requested that the Board adopt the Labor Member's suggestion to include in the regulation a rule under which an individual who is overpaid because of an incorrect annuity rate caused by Board error and where the rate continues for at least 5 months after the Board has been put on notice of the error, would be presumed to be without fault for any payments after the fifth month.

In response to these comments and suggestions from rail labor and management the Board has added a new paragraph (3) to § 255.11(e) which provides that an individual shall not be considered at fault with respect to an overpayment caused by the agency's failure to reduce his or her annuity after he or she has put the Board on notice of an event which, had the Board acted, would have triggered the reduction.

Another commenter criticized section 255.12(c)(2), which permits the Board to consider non-liquid assets in determining whether an overpaid individual has the financial ability to repay the overpayment. The commenter stated that one should not have to sell his or her tangible personal property or real estate to repay an overpayment. The Board believes that it is not unreasonable to require an individual who has received an overpayment of benefits and who has substantial equity in real estate or significant holdings in tangible personal property such as precious metals, antiques, or art work to liquidate or borrow against such holdings to repay the overpayment he or she received where such repayment would not affect his or her ability to meet ordinary and necessary living expenses. However, the Board has revised § 255.12(c)(2) to provide that an individual does not have to sell his or her principal residence in order to repay the debt.

A commenter also objected to Example 1 under section 255.12. In the commenter's view, the example indicated that future medical expenses could not be taken into consideration when determining whether an individual is financially able to repay the overpayment. In response to this comment and the suggestions of rail labor and rail management this example has been revised to better explain how medical expenses will be considered in determining whether waiver is appropriate.

Another comment was directed toward section 255.15 which provides that waiver is not available to an estate. The commenter argues that waiver should be available to an estate where recovery of the overpayment would be against equity or good conscience. Based on this comment and the suggestions of rail labor and rail management, the Board has modified the wording of section 255.15 to provide that recovery from an estate will never be contrary to the purpose of the Railroad Retirement Act, but could be against equity and good conscience.

Finally, another commenter criticized proposed section 255.16 which provides that *de minimis* overpayments (overpayments under $500) shall not be waived. The commenter argued that many of these overpayments are the result of Board computational error and that the administrative costs of pursuing such small amounts—not to mention the ill will caused—would suggest that overpayments this small should automatically be waived. Based on this comment and the views of rail labor and management, the Board has removed this section.

In addition to the comments discussed above, two persons requested the Board to delay final action on this regulation to allow railroad labor and railroad management to reach agreement on the substance of the rule. The Board notes that the promulgation of regulations is the sole province of the Board, and although, any agreement resulting from negotiations between the parties is not controlling with respect to the Board's actions, the Board has considered and adopted various suggestions made by rail labor and management in adopting this rule.

The Office of Management and Budget determined that this is a significant regulatory action for purposes of Executive Order 12866. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 255

Railroad employees, Railroad retirement.

1. For the reasons set out in the preamble, title 20, chapter II, part 255 of the Code of Federal Regulations is revised as follows:

PART 255—RECOVERY OF OVERPAYMENTS

Sec.

255.1 Introduction.
255.2 Overpayments.
255.3 When overpayments are to be recovered.
255.4 Persons from whom overpayments may be recovered.
255.5 Recovery by cash payment.
255.6 Recovery by setoff.
255.7 Recovery by deduction in computation of death benefit.
255.8 Recovery by adjustment in connection with subsequent payments.
255.9 Individual enrolled under supplementary medical insurance plan.
255.10 Waiver of recovery.
255.11 Fault.
255.12 When recovery is contrary to the purpose of the Railroad Retirement Act.
255.13 When recovery is against equity or good conscience.
255.14 Waiver not available when recovery can be made from accrual of social security benefits.
255.15 Waiver to an estate.
255.16 Administrative relief from recovery.
255.17 Recovery of overpayments from a representative payee.
255.18 Compromise of overpayments.
255.19 Suspension or termination of the collection of overpayments.

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231i.

§ 255.1 Introduction.

Section 10 of the Railroad Retirement Act provides for the recovery of an overpayment of benefits to an individual. This part explains when an overpayment must be recovered, from whom an overpayment may be recovered, and when recovery of the overpayment may be waived or administrative relief from recovery granted, and circumstances under which the overpayment may be compromised, or circumstances under which recovery of the overpayment may be suspended or terminated.

§ 255.2 Overpayments.

An overpayment, within the meaning of this part, is made in any case in which an individual receives a payment under the Railroad Retirement Act, all or part of which payment he or she is not entitled to receive.

§ 255.3 When overpayments are to be recovered.

Overpayments shall be recovered in all cases except those in which recovery is waived under § 255.10 of this part or administrative relief from recovery is granted under § 255.16 of this part, or where the overpayment is compromised or recovery is terminated or suspended under §§ 255.18 or 255.19 of this part.

§ 255.4 Persons from whom overpayments may be recovered.

(a) *Overpaid individual.* The Board may recover an overpayment from the individual to whom the overpayment has been made by any method permitted by this part, or by the Federal Claims Collection Standards (4 CFR chapter 2) (Example 1 of this section). If the overpaid individual dies before recovery is completed, then recovery may be effected by recovery from the estate or the heirs of such individual.

(b) *Other than overpaid individual.* The Board may recover an overpayment from a person other than the overpaid individual if such person is receiving benefits based upon the same record of compensation as the overpaid individual under a statute administered by the Board. In such a case, the Board will ordinarily recover the overpayment by setoff against such benefits as are provided for in § 255.6 of this part (Example 2 of this section). However, the Board may ask for a cash refund of the overpayment.

(c) *Individual not in the same household.* Recovery under paragraph (b) of this section may be made from an individual who was not living in the same household, as defined in part 216 of this chapter, as the overpaid individual at the time of the overpayment, if the individual from whom recovery is to be made either was aware that benefits were being paid incorrectly or benefitted from the overpayment. (Example 3 of this section).

(d) *Examples.* This section may be illustrated by the following examples:

Example (1). An employee receiving a disability annuity returns to work without notifying the Board. The Board discovers that the employee is working and determines that the employee has recovered from his disability and has been overpaid. The Board requests that the employee repay the overpayment by cash refund either in one lump sum or in installment payments. If the employee refuses, the Board may refer the debt to a collection agency or the Department of Justice for civil suit or may collect the debt in any other manner permitted by law.

Example (2). The employee in Example 1 agrees to refund the overpayment by cash installment payments. However, the employee dies before repaying the total amount of the overpayment. At his death the employee's widow, who was living with the employee at the time the overpayment was incurred, becomes entitled to a widow's annuity. The Board may recover the remainder of the overpayment from any benefits due the widow.

Example (3). C, a child of a deceased employee by his first marriage, is receiving a disability annuity on the employee's record of compensation. W, the employee's second wife, is receiving a widow's annuity on the employee's record of compensation. C lives with his mother, the employee's first wife. C marries without notifying the Board. Marriage terminates a child's annuity. W is not aware of C's marriage. Upon discovery of C's marriage, the Board demands that C refund the overpaid annuities; C refuses. Even though W is receiving an annuity based upon the same record of compensation as that of C, the Board will not recover the overpayment from W because she is not in the same household as C, was not aware of the incorrect benefits paid, and did not benefit from them.

§ 255.5 Recovery by cash payment.

The Board shall have the right to require that an overpayment to an individual be immediately and fully repaid in cash by that individual. However, if the Board determines that the individual is financially unable to pay the amount of the indebtedness in a lump sum, payment may be accepted in regular installments in accordance with the Federal Claims Collection Standards, found in 4 CFR chapter 2. These standards provide that whenever possible installment payments should be sufficient in amounts and frequency to liquidate the debt in not more than 3 years.

§ 255.6 Recovery by setoff.

An overpayment may be recovered by setoff from any subsequent payment determined to be payable under any statute administered by the Board to the individual who received the overpayment. An overpayment may be recovered from someone other than the overpaid individual by setoff from a subsequent payment determined to be payable to that other individual on the basis of the same record of compensation as that of the overpaid individual.

§ 255.7 Recovery by deduction in computation of death benefit.

In computing the residual lump sum provided for in part 234, subpart D, of this chapter, the Board shall include in the benefits to be deducted from the applicable percentages of the aggregate compensation provided for in that part all overpayments, whether waived under § 255.10 of this part or otherwise not recovered, that were paid to the employee or to his or her spouse or to his or her survivors with respect to the employee's employment.

§ 255.8 Recovery by adjustment in connection with subsequent payments.

Recovery of an overpayment may be made by permanently reducing the amount of any annuity payable to the individual or individuals from whom recovery is sought. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment does not become effective until the overpaid individual negotiates the first annuity check which reflects the annuity rate after actuarial adjustment.

Example. An annuitant agrees to recovery of a $5,000 overpayment by actuarial adjustment. However, the annuitant dies before negotiating the first annuity check reflecting the actuarially-reduced rate. The $5,000 is not considered recovered. If the annuitant had negotiated the check before he died, the $5,000 would be considered fully recovered.

§ 255.9 Individual enrolled under supplementary medical insurance plan.

Where recovery of the overpayment is by setoff as provided for in § 255.6 of this part, and where recovery of the overpayment by such means will be accomplished within a period of 5 months, and the individual from whom recovery is sought is an enrollee under Part B of Title XVIII of the Social Security Act (Supplementary Medical Insurance Benefits for the Aged and Disabled), an amount of such individual's monthly benefit which is equal to his or her obligation for supplementary medical insurance premiums will be applied toward payment of such premiums, and the balance of the monthly benefit will be applied toward recovery of the overpayment.

§ 255.10 Waiver of recovery.

There shall be no recovery from any person in any case where more than the correct amount of annuities or other benefits has been paid to an individual or where payment has been made to an individual not entitled thereto if in the judgment of the Board:

(a) The overpaid individual is without fault, and

(b) Recovery would be contrary to the purpose of the Railroad Retirement Act or would be against equity or good conscience.

§ 255.11 Fault.

(a) Before recovery of an overpayment may be waived, it must be determined that the overpaid individual was without fault in causing the overpayment. If recovery is sought from other than the overpaid individual but the overpaid individual was not without fault, then waiver is not available. However, see § 255.16 of this part for provisions as to when administrative relief from recovery may be granted in such circumstances.

(b) Fault means a defect of judgment or conduct arising from inattention or bad faith. Judgment or conduct is defective when it deviates from a standard of reasonable care taken to comply with the entitlement provisions of this chapter. Conduct includes both action and inaction. Unlike fraud, fault does not require a deliberate intent to deceive.

(c) Whether an individual is at fault in causing an overpayment generally depends on all circumstances surrounding the overpayment. Among the factors the Board will consider are: the ability of the overpaid individual to understand the reporting requirements of the Railroad Retirement Act or to realize that he or she is being overpaid (*e.g.*, age, education, comprehension, physical and mental condition); the particular cause of non-entitlement to benefits; and the number of instances in which the individual may have made erroneous statements.

(d)(1) Circumstances in which the Board will find an individual at fault include but are not limited to:

(i) Failure to furnish to the Railroad Retirement Board information which the individual knew or should have known to be material;

(ii) An incorrect statement made by the individual which he or she knew or should have known was incorrect (including furnishing an opinion or conclusion when asked for facts); and

(iii) Failure to return a payment which the individual knew or should have known was incorrect.

(2) Where any of the circumstances listed in paragraph (d)(1) are found to have occurred, the individual shall be presumed to be not without fault. This presumption may be rebutted, but the burden of presenting evidence to rebut the presumption is on the individual.

(3) For purposes of paragraph (d)(1)(i), furnishing information to the Social Security Administration or any other agency shall not be considered to constitute furnishing information to the Railroad Retirement Board.

(4) For purposes of this section, an error on the part of the agency shall not extinguish fault on the part of the individual.

(e) Circumstances in which the Board will find an individual not at fault include but are not limited to:

(1) The overpayment is the result of Board error of which the overpaid individual was not aware and could not reasonably have been expected to be aware (Example 1 of this section).

(2) The overpayment is the result of an adjustment to the overpaid individual's annuity because of entitlement of another individual to an annuity on the same record of compensation as that of the overpaid individual (Example 2 of this section).

(3) The overpayment is the result of the Board's continuing to pay an individual after he or she has notified the Board of an event which caused or should have caused a reduction in his or her benefit; provided that continued payment of the unreduced benefit led the individual to believe in good faith that he or she was entitled to the payments subsequently received.

(f) The application of this section may be illustrated by the following examples:

Example (1). The Board makes a mathematical error in the computation of an employee's annuity, thus giving the employee a higher rate than he or she is entitled to but which is sufficiently close to the estimated rate given the employee at the time he or she applied for the annuity that the employee believed, in good faith, that the amount was correct. The employee is not at fault in causing the overpayment in this case. The overpayment may be waived if the requirements of § 255.12 or § 255.13 of this part are met.

Example (2). The widow and four minor children of a railroad employee are receiving benefits from the Board under the family maximum. Another minor child not living in the same household as the above individuals is also determined to be the child of the deceased employee. The widow was not aware of the existence of this child. An award of benefits to this child causes a reduction in benefits to the other individuals under the family maximum benefit provision of the Social Security Act. Because of normal administrative delay this reduction does not take place for a period of 2 months after its effective date. The widow and her children are without fault with respect to this overpayment. The overpayment may be waived if the requirements of § 255.12 or § 255.13 of this part are met.

§ 255.12 When recovery is contrary to the purpose of the Railroad Retirement Act.

(a) The purpose of the Railroad Retirement Act is to pay retirement and survivor annuities and other benefits to eligible beneficiaries. It is contrary to the purpose of the Act for an overpayment to be recovered from income and resources which the individual requires to meet ordinary and necessary living expenses. If either income or resources, or a combination thereof, are sufficient to meet such expenses, recovery of an overpayment is not contrary to the purpose of the Act.

(b) For purposes of this section, income includes any funds which may reasonably be considered available for the individual's use, regardless of source, including inheritance prospects. Income to the individual's spouse or dependents is available to the individual if the spouse or dependent lived with the individual at the time waiver is considered. Types of income include but are not limited to:

(1) Government benefits, such as Black Lung, Social Security, Workers' Compensation, and Unemployment Compensation benefits;

(2) Wages and self-employment income;

(3) Regular incoming payments, such as rent or pensions; and

(4) Investment income.

(c) For purposes of this section, resources may include:

(1) Liquid assets, such as cash on hand, the value of stocks, bonds, savings accounts, mutual funds and the like;

(2) Non-liquid assets (except an individual's primary residence) at their fair market value; and

(3) Accumulated, unpaid Federal benefits.

(4) For purposes of paragraphs (c)(1) and (2) of this section, assets concealed or improperly transferred on and after the date of notification of the overpayment, other than cash expended to meet ordinary and necessary living expenses, shall be included.

(d) Whether an individual has sufficient income and resources to meet ordinary and necessary living expenses depends not only on the amount of his or her income and resources, but also on whether the expenses are ordinary and necessary. While the level of expenses which is ordinary and necessary may vary among individuals, it must be held at a level reasonable for an individual who is living on a fixed income. The Board will consider the discretionary nature of an expense in determining whether it is reasonable. Ordinary and necessary living expenses include:

(1) Fixed living expenses such as food and clothing, rent, mortgage payments, utilities, maintenance, insurance (*e.g.*, life, accident, and health insurance), taxes, installment payments, etc.;

(2) Medical, hospital, and other similar expenses;

(3) Expenses for the support of others for whom the individual is legally responsible; and

(4) Miscellaneous expenses (*e.g.*, newspapers, haircuts).

(e) Where recovery of the full amount of an overpayment would be made from income and resources required to meet ordinary and necessary living expenses, but recovery of a lesser amount would leave income or resources sufficient to meet such expenses, recovery of the lesser amount is not contrary to the purpose of the Act.

(f) This section may be illustrated by the following examples:

Example (1). A remarried widow, W, is overpaid $6000 due to receipt of benefits on the wage records of both her late husbands. It has been determined that she is without fault. Her financial disclosure statement reveals monthly income greater than monthly expenses, and assets of $12,000, $10,000 of which is in cash. She claims to be saving these funds for future medical expenses, because she has a progressive disease. While it is not necessarily contrary to the purposes of the Act to recover the overpayment in these circumstances, the legitimate medical expenses associated with the disease must be considered.

Example (2). A disability annuitant, D, is overpaid $33,000 because of simultaneous entitlement to workers' compensation payments. He is determined to be without fault. He claims he has assumed financial responsibility for his adult child and her children. A claimed expense for which the annuitant has no legal obligation to pay does not make recovery contrary to the purposes of the Act.

§ 255.13 When recovery is against equity or good conscience.

(a) Recovery is considered to be against equity or good conscience if a person, in reliance on payments made to him or her or on notice that payment would be made, relinquished a significant and valuable right (Example 1 of this section) or changed his or her position to his or her substantial detriment (Example 2 of this section).

(b) An individual's ability to repay an overpayment is not material to a finding that recovery would be against equity or good conscience but is relevant with respect to the credibility of a claim of detrimental reliance under paragraph (a) of this section.

(c) This section may be illustrated by the following examples:

Example (1). After being informed by the Board that he had been credited with sufficient years of railroad service to retire at age 60, an employee quit his railroad job and applied for benefits under the Railroad Retirement Act. He receives benefits for six months when it is discovered that he had insufficient railroad service to retire at age 60 and was not entitled to the benefits he received. His annuity was terminated. Because the employee gave up his seniority rights when he quit his railroad job, he cannot get his job back. It is determined that the employee was not at fault in causing the overpayments. In this situation recovery of the overpayment would be against equity or good conscience because the overpaid individual gave up a valuable right.

Example (2). A widow, having been awarded annuities for herself and her daughter, entered her daughter in a private school. The widow did not have substantial assets and her income, apart from the annuities she received in the amounts payable, would not have been sufficient for her to have undertaken the obligation to send her daughter to private school. In order to pay for the schooling she took out a loan and used the monthly annuities to pay interest and principal on the loan. After the widow and her daughter had received payments for almost a year, the deceased employee was found not to have been insured under the Railroad Retirement Act. Therefore, all payments to the widow and child were erroneous and the annuities were terminated. It is determined that the widow was not at fault in causing the overpayment. Having incurred a financial obligation (the school loan) toward which the benefits had been applied, the widow was in a worse position financially than if she and her daughter had never been entitled to benefits. In this situation, the recovery of the overpayment would be against equity or good conscience.

§ 255.14 Waiver not available when recovery can be made from accrual of social security benefits.

Where the overpayment is the result of a reduction of benefits payable under the Railroad Retirement Act due to the overpaid individual's entitlement to social security benefits and recovery of such overpayment may be made by offset against an accrual of social security benefits, it shall not be considered to be against equity or good conscience or contrary to the purpose of the Railroad Retirement Act to recover the overpayment by offset against the accrual. Consequently, in such a case recovery of an overpayment is not subject to waiver consideration.

§ 255.15 Waiver to an estate.

It shall never be considered contrary to the purpose of the Railroad Retirement Act to recover an overpayment from the estate of an overpaid individual.

§ 255.16 Administrative relief from recovery.

(a) Where the Board seeks to recover an overpayment from someone other than the overpaid individual, as provided for in § 255.4 of this part, and where waiver of recovery, as provided for in § 255.10 of this part, is not available because the overpaid individual was at fault as defined in § 255.11 of this part, the Board may forego recovery of the overpayment where the individual from whom recovery is sought was not at fault in causing the overpayment and where recovery is contrary to the purpose of the Railroad Retirement Act as defined in § 255.12 of this part.

(b) Application of administrative relief from recovery with respect to a given person from whom recovery may be made shall have no effect on the authority of the Board to recover the overpayment from anyone else from whom recovery may be sought.

(c) This section may be illustrated by the following examples:

Example (1): An employee, through his own fault, causes an overpayment in his annuity. The employee dies before the overpayment can be recovered from him and he leaves no estate. A widow's annuity is payable on the employee's compensation record. The widow was not at fault in causing the overpayment. The Board may recover the remainder of the overpayment by setoff against the widow's annuity. However, it may forego recovery under this section if such recovery would be contrary to the purpose of the Railroad Retirement Act as defined in § 255.12 of this part. Since this is not a waiver of the overpayment, the Board is free to recover the overpayment from the widow at a later date, for example, if an accrual of benefits should become payable, or if it determines that such recovery would not be against the purpose of the Railroad Retirement Act.

Example (2): A representative payee for a retarded child, through her own fault, causes an overpayment in the child's annuity. The overpaid amounts were used for the benefit of the child. The representative payee dies before the overpayment can be recovered from her and she leaves no estate. The Board may not waive the remainder of the overpayment with respect to the child since for purposes of waiver the representative payee is considered the overpaid individual (see § 255.17 of this part) and the overpaid individual was at fault. However, if the child was not at fault in causing the overpayment and recovery would be contrary to the purpose of the Railroad Retirement Act as defined in § 255.12 of this part, then the Board may forego recovery of the overpayment from the child's annuity under this section.

§ 255.17 Recovery of overpayments from a representative payee.

(a) *Joint liability.* In general, if an overpayment is made to an individual receiving benefits as a representative payee (see part 266 of this chapter) the Board may recover the overpayment from either the representative payee or the beneficiary, or both. If the beneficiary is currently receiving benefits, either in his or her own right or through a representative payee, the Board will generally propose to recover the overpayment by setoff against those benefits as provided for in § 255.6 of this part. If the beneficiary is not currently receiving benefits but the representative payee is receiving benefits, then the Board will generally propose to recover the overpayment by setoff against those benefits.

(b) *Waiver of overpayments.* For purposes of § 255.10 of this part (Waiver of recovery), if it is determined that the representative payee was at fault in causing the overpayment there may be no waiver of the overpayment either as to the representative payee or the beneficiary. However, if the beneficiary was not at fault in causing the overpayment he or she may be eligible for administrative relief from recovery under § 255.16 of this part.

(c) This section may be illustrated by the following examples:

Example (1). M is receiving a child's annuity as a representative payee for her disabled son, S. With M's knowledge S marries. Although both M and S know that marriage terminates the child's annuity, neither of them informs the Board of this event. Both M and S are liable for any overpayment caused. Waiver is not available since M would be considered at fault in causing the overpayment. Administrative relief from recovery is not available to S since he would also be considered at fault.

Example (2). R is a representative payee for B, who resides in a skilled-care facility. R is found to be at fault in causing an overpayment of benefits to B. The Board may recover the overpayment from either R or B. Waiver is not available because R was at fault in causing the overpayment. However, if B was not at fault in causing the overpayment

he or she may be entitled to administrative relief from recovery under § 255.16 of this part.

§ 255.18 Compromise of overpayments.

(a) This section sets forth the principal standards which the Board applies in exercising its authority under 31 U.S.C. 3711 to compromise an overpayment. In addition, the Board may compromise an overpayment under the Federal Claims Collection Standards set forth in 4 CFR part 103.

(b) An overpayment may be compromised only if it is in the best interest of the agency. Circumstances and factors to be considered are:

(1) The overpayment cannot be collected because of the overpaid individual's inability to pay the full amount of the overpayment within a reasonable time;

(2) The overpaid individual refuses to pay the overpayment in full and it appears that enforced collection procedures will take an inordinate amount of time or that the cost of collecting does not justify the enforced collection of the full amount; or

(3) There is doubt that the Board could prove its case in court for the full amount claimed because of a bona fide dispute as to the facts or because of the legal issues involved.

§ 255.19 Suspension or termination of the collection of overpayments.

This section sets forth the principal standards which the Board applies in approving the suspension or termination of the collection of an overpayment. In addition the Board may suspend or terminate collection under the Federal Claims Collection Standards set forth in 4 CFR part 104.

(a) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe future collection action may be productive or collection may be effected by offset in the near future.

(b) Collection action may be terminated when:

(1) The debtor is unable to make any substantial payment;

(2) The debtor cannot be located and offset is too remote to justify retention of the claim;

(3) The cost of collection action will exceed the amount recoverable; or

(4) The claim is legally without merit or cannot be substantiated by the evidence.

Dated: November 21, 1997.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–31726 Filed 12–03–97; 8:45 am]

BILLING CODE 7905–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 96–111; CC Docket No. 93–23; FCC 97–399]

Non-U.S.-Licensed Satellites Providing Domestic and International Service in the United States

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Communications Commission (Commission) adopts a new standard for foreign participation in the U.S. satellite services market consistent with the United States' obligations under the WTO Basic Telecom Agreement. The common sense rules and procedures we establish will provide opportunities for foreign entities to deliver satellite services in this country. The liberalized market conditions that will result from the WTO Basic Telecom Agreement will allow U.S. companies to enter previously closed foreign markets. These joint initiatives will benefit U.S. consumers by increasing the availability of various satellite services, providing more alternatives, reducing prices, and facilitating technological innovation. This new environment will encourage a more competitive satellite market in the United States, as well as spur development of broader, more global satellite systems. It will also foster greater opportunity for communications across national boundaries by making it easier for consumers worldwide to gain access to people, places, information, and ideas.

DATES: These amendments contain information collection requirements which are not effective until approved by the Office of Management and Budget, subject to 5 U.S.C. 801(a)(3). FCC will publish a document in the **Federal Register** announcing the effective date. Public and agency comments on the modifications to the information collections are due on or before February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Haller at (202) 418–0760, Tania Hanna at (202) 418–0762, or Laurie Sherman at (202) 418–0429 of the International Bureau. For additional information concerning the information collections contained in this Report and Order, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in IB Docket No. 96–111; CC Docket No. 93–23; FCC 97–399, adopted November 25, 1997 and released November 26, 1997. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W. Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 1231 20th Street, N.W., Washington, DC 20036, telephone: 202–857–3800; facsimile: 202–857–3805.

This Report and Order contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due on or before February 2, 1998; OMB notification of action is due February 2, 1998. Comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

This Report and Order contains modifications to approved collections and has been submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)). For copies of the submissions contact Judy Boley at (202) 418–0214. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Performance Evaluation and Records Management Branch, Room 234, Paperwork Reduction Project, OMB No. 3060–0678, Washington, D.C. 20554. For further information contact Judy Boley, (202) 418–0214.

OMB Approval Number: 3060–0678.

Title: Commission's Rules and Regulations for Satellite Applications and Licensing Procedures.

Form Number: 312.

Type of Review: Revision of existing collections.

Respondents: Businesses or other for profit organizations, including small businesses, governments.

Number of Respondents: 1,310.

Estimated Time Per Response: The Commission estimates that all respondents will hire an attorney or legal assistant to complete the form. The time to retain these services is 2 hours per respondent.

Total Annual Burden: 2,620 hours.

Estimated Costs Per Respondent: This includes the charges for hiring an attorney, legal assistant, or engineer at $150 an hour to complete the submissions. The estimated average time to complete the Form 312 is 11 hours per response. The estimated average time to complete space station submissions is 20 hours per response. The estimated average time to prepare submissions using non-U.S. licensed satellites is 22 hours per response. The estimated average time to complete the ASIA submission is 24 hours per response. Fee amounts vary by type of service and application. Total fee estimates for industry are approximately $5,800,000.00.

Needs and Uses: In accordance with the Communications Act, the information collected will be used by the Commission in evaluating applications requesting authority to operate pursuant to part 25 of the Commission's rules. The information will be used to determine the legal, technical, and financial ability of the applicants and will assist the Commission in determining whether grant of such authorizations are in the public interest.

Summary of Report and Order

1. In this Report and Order, the Commission takes an historic step by implementing the market opening commitments made by the United States in the World Trade Organization (WTO) Agreement on Basic Telecommunications Services (WTO Basic Telecom Agreement).[1] The WTO Basic Telecom Agreement, which will take effect on January 1, 1998,[2] is the culmination of the efforts of the United States and 68 other WTO Members to bring competition to global markets for telecommunications services, including satellite services. The WTO Basic Telecom Agreement is centered on the principles of open markets, private investment, and competition. It covers nations that account for 90 percent of worldwide telecommunications services revenues. By opening markets worldwide, the WTO Basic Telecom Agreement will allow new entrants to deploy innovative, cost-effective technologies, and thereby advance the growth of satellite services around the globe.

2. The Commission is optimistic that global implementation of the WTO Basic Telecom Agreement will result in significant worldwide benefits to consumers and providers. At the same time, it recognizes that much work needs to be done to ensure that the promise of the WTO Basic Telecom Agreement is fulfilled. With this Report and Order and the companion Foreign Participation in the U.S. Telecommunications Market Report and Order,[3] the Commission has implemented the letter and the spirit of the market opening commitments made by the United States. The Commission expects that foreign entities will begin to enter and compete in the U.S. market soon after January 1, 1998. The Commission also expects that U.S. providers will likewise be able to enter and compete in previously-closed foreign markets.

3. Under the terms of the WTO Basic Telecom Agreement, the United States has committed to allow foreign suppliers to provide a broad range of basic telecommunications services, including satellite services, in the United States. In return, most of the world's major trading nations have made binding commitments to move from monopoly provision of basic telecommunications services to open entry and procompetitive regulation of these services. In this Report and Order, the Commission implements the United States' commitments to provide access to the U.S. market for satellite services by establishing a framework for assessing applications by non-U.S. licensed satellite systems to serve the United States.

4. The common sense policies and rules the Commission adopts will produce substantial public interest benefits for U.S. consumers. First, they will facilitate greater competition in the U.S. satellite services market. Enhanced competition in the U.S. market, in turn, will provide users more alternatives in choosing communications providers and services, as well as reduce prices and facilitate technological innovation. In addition to encouraging a more competitive satellite market in the United States, this new environment will spur development of broader, more global satellite systems. These advancements will foster greater global community benefits by providing users, ranging from individual consumers and businesses to schools and hospitals, increased access to people, places, information, and ideas worldwide.

5. In the companion Foreign Participation Order, the Commission takes parallel steps to carry out the market opening commitments made by the United States in the WTO Basic Telecom Agreement. That order establishes a framework for facilitating entry into the U.S. market by foreign entities for provision of telecommunications services (other than satellite services). As in the companion order, in this Report and Order the Commission adopts for satellite services an approach that encourages foreign entry. Both decisions are guided by the common objective of promoting competition in the U.S. market, and achieving a more competitive global market for all basic telecommunications services.

6. While the United States was negotiating the WTO Basic Telecom Agreement, the Commission was exploring measures to increase opportunities for foreign entry in the United States satellite services market. The Commission began this proceeding in May 1996 by issuing a Notice of Proposed Rulemaking.[4] The NPRM proposed a uniform framework for permitting foreign-licensed satellite systems to serve the United States. Adopted when only a few of the world's satellite markets were open to competition by U.S. providers, the NPRM proposed to evaluate the effective competitive opportunities (ECO) in the country in which the foreign satellite was licensed (the ECO-Sat test) prior to granting an application to serve the United States. After the conclusion of the WTO Basic Telecom Agreement, the Commission issued a Further Notice of Proposed Rulemaking revising its proposals based on the

[1] The results of the WTO basic telecommunications services negotiations are incorporated into the General Agreement on Trade in Services (GATS) by the Fourth Protocol to the GATS (April 30, 1996), 36 I.L.M. 336 (1997) (the ''Fourth Protocol to the GATS''). These results, as well as the basic obligations contained in the GATS, are referred to in this summary as the ''WTO Basic Telecom Agreement.''

[2] See ¶3 of the Fourth Protocol to the GATS.

[3] Foreign Participation in the U.S. Telecommunications Market Report and Order, FCC 97–398 (released November 26, 1997) (Foreign Participation Order).

[4] In the Matter of Amendment of the Commission's Regulatory Policies to Allow Non-U.S. licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Notice of Proposed Rulemaking, 11 FCC Rcd 18178 (1996), 61 FR 32398 (June 24, 1996) (*NPRM*).

market-opening changes that should result from the Agreement.[5] Both the NPRM and the FNPRM reflect the Commission's continuing objective to foster development of innovative satellite communications services for U.S. consumers through fair and vigorous competition among multiple service providers, including foreign-licensed satellites.

7. Specifically, in this Report and Order, the Commission adopts a framework under which it will consider requests for access by non-U.S. licensed satellites[6] into the United States. As required by Title III of the Communications Act of 1934, as amended (Communications Act), we will examine all requests to determine whether grant of authority is consistent with the public interest, convenience and necessity.[7] In making this determination, we will consider public interest factors such as the effect on competition in the United States, spectrum availability, eligibility and operating requirements, as well as national security, law enforcement, and trade and foreign policy concerns raised by the Executive Branch. The Commission adopts a presumption that entry by WTO Member satellite systems will promote competition in the U.S. satellite services market. Opposing parties may rebut the presumption by showing that granting the application would cause competitive harm in the U.S. satellite services market. Although we find that license conditions will generally provide sufficient protection against anticompetitive conduct, we recognize the possibility that circumstances might arise in which conditions might not adequately constrain the potential for anticompetitive harm in the U.S. market. In such cases, the Commission reserves the right to attach additional conditions to a license grant, or in the exceptional case in which grant would lose a very high risk to competition, deny an application.

8. The Commission will apply the presumption that entry will promote competition to affiliates of intergovernmental satellite organizations (IGO) licensed by WTO Members. For applications from COMSAT to provide U.S. domestic service via INTELSAT or Inmarsat, the Commission will require COMSAT to waive its immunity from suit and demonstrate that the service will enhance competition in the U.S. market. For satellites licensed by non-WTO Members and for all satellites providing Direct-to-Home (DTH), Direct Broadcasting Satellite (DBS), and Digital Audio Radio Services (DARS), we will examine whether U.S. satellites have effective competitive opportunities in the relevant foreign markets to determine whether allowing the foreign-licensed satellite to serve the United States would satisfy the competition component of the public interest analysis.

9. This new framework is based on consideration of over 100 comments submitted from parties around the world over the course of more than a year, is grounded in the public interest requirements of the Communications Act and the procompetitive principles of the WTO Basic Telecom Agreement, sets forth clear criteria for entry into the United States by various types of non-U.S. satellites, delineates the applicable Commission rules and describes in detail the procedures for applications to provide service in the United States using a non-U.S. licensed satellite. This framework will largely replace the Commission's current approach of reviewing applications involving non-U.S. licensed satellites based on the individual circumstances before it. The Commission expects that our new framework will encourage and ease entry by non-U.S. satellites into the U.S. market and that the occasional request the Commission receives today involving a non-U.S. licensed satellite will become more common. At the same time, the Commission plans to continue to look carefully at market opening measures enacted by the rest of the world.

10. *Policy Objectives*. The purpose of this Report and Order is to establish a new framework to facilitate competitive entry in the U.S. satellite services market by non-U.S. licensed satellites, consistent with the WTO Basic Telecom Agreement. Providing opportunities for non-U.S. licensed satellites to deliver services in this country should bring U.S. consumers the benefits of enhanced competition and afford greater opportunities for U.S. companies to enter previously closed foreign markets, thereby stimulating a more competitive global satellite services market.

11. *WTO Members*. The Commission adopts an open entry standard for applicants seeking to access satellite systems licensed by WTO Members to provide satellite services covered under the WTO Basic Telecom Agreement. An open entry policy will enable U.S. consumers to enjoy the benefits of increased competition in U.S. markets. The Commission presumes that entry will enhance competition in light of the fact that so many WTO Members have committed to lifting entry restrictions and adopting competitive safeguards. Where necessary to constrain the potential for anticompetitive harm in the U.S. market for satellite services, the Commission reserves the right to attach conditions to a grant of authority, and in the exceptional case in which an application poses a very high risk to competition, to deny an application.

12. *Non-WTO Members*. The Commission continues to be concerned about effective competitive opportunities for U.S. satellite systems in non-WTO Member markets. It finds that the market conditions that existed when the Commission proposed to adopt an ECO-Sat test, which determines whether there are effective competitive opportunities for U.S. satellites in the foreign market, have not changed sufficiently with respect to countries that are not members of the WTO. The Commission therefore finds that it will serve the goals of our international satellite policy to apply the ECO-Sat test in the context of applications from non-WTO Member entities and encourage such countries to open their markets to competition.

13. *Services Not Covered by the WTO Basic Telecom Agreement*. The Commission finds that circumstances that existed when it proposed to adopt an ECO-Sat test have not changed sufficiently with respect to DTH services, DBS services, and DARS. Commitments made as part of the WTO Basic Telecom Agreement were not sufficient to enable it to adopt a presumption of entry for these services. The Commission will apply the ECO-Sat test to applications to provide these services through all satellite systems, whether or not they are systems of WTO Members.

14. *Intergovernmental Satellite Organizations (IGOs) and IGO Affiliates*. Prior to acting on any application from COMSAT to provide domestic service via INTELSAT or Inmarsat, the Commission will require COMSAT to make an appropriate waiver of its immunity from suit, including suit under the U.S. antitrust laws. The Commission will then look to COMSAT to show that entry into the domestic market would promote competition and would otherwise be in the public interest. The Commission will treat IGO

[5] Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Further Notice of Proposed Rulemaking, FCC 97–252 (released July 18, 1997), 62 FR 40494 (July 29, 1997) (FNPRM).

[6] The phrase ''non-U.S.'' licensed satellite system or operator means one that does not hold a commercial space station license from the Commission. By contrast, a ''U.S.'' satellite system or operator means one whose space station is licensed by the Commission.

[7] 47 U.S.C. 301, *et. seq.*

affiliates that are licensed by WTO Members as it would similar systems licensed by WTO Members. In evaluating the competition component of an application involving an IGO affiliate, the Commission will consider any potential anticompetitive or market distorting consequences of a continued relationship or connection between an IGO and its affiliate.

15. *Additional Public Interest Factors and Operating Requirements*. In evaluating requests to serve the United States using a non-U.S. satellite, the Commission also will consider additional public interest factors, including spectrum availability, eligibility requirements such as legal, technical and financial qualifications, operating requirements, and national security, law enforcement, foreign policy and trade policy concerns. In applying these factors, the Commission will treat non-U.S. satellites as it would U.S. licensed satellites at the request stage, as well as after a system is operational. Thus, non-U.S. systems will be required to comply with the same financial, technical and legal qualifications, observe the prohibition against exclusive service arrangements and comply with other generally-applicable service rules.

16. *Access Procedures*. In implementing this framework, the Commission will not require space stations licensed by another country or administration to obtain separate and duplicative U.S. space station licenses. Rather, the Commission will license earth stations in the United States to operate with these satellites. Further, the Commission will permit operators of existing or planned non-U.S. space stations to participate in U.S. space station processing rounds, where the Commission considers competing applications to operate space stations that will offer a specific satellite service in particular frequency bands. In addition, earth station entities may file an earth station application either in a processing round or separately where the non-U.S. satellite is already in orbit.

17. This Report and Order contains a modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Report and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due on or before February 2, 1998. OMB comments are due on or before February 2, 1998. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

18. Written comments by the public on the proposed and/or modified information collections are due to Commission on or before February 2, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Performance Evaluation and Records Management Branch, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov. NOTE: OMB is required to make a decision concerning the modified collection of information contained in this Report and Order between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Final Regulatory Flexibility Analysis

19. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM in IB Docket No. 96–111.[8] After the conclusion of the WTO Basic Telecom Agreement, the Commission released the FNPRM requesting comment on the proposals in the FNPRM, including the IRFA.[9] The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).[10]

[8] See *supra* n.4.

[9] See *supra* n.5.

[10] See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act (CWAAA) of 1996, Public Law 104–121, 110 Stat. 847 (1996). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

I. Need for, and Objectives of, the International Satellite Services Report and Order

20. In this Report and Order, the Commission promulgates rules for non-U.S. licensed satellites to provide satellite services in the United States. This action will advance the growth of global satellite services and create greater competition in the U.S. satellite market. Enhanced competition in the U.S. market will benefit U.S. consumers, including small businesses, by increasing the availability of various satellite services, providing more alternatives in the selection of communications services, reducing prices, and facilitating technological innovation. The Commission adopts these rules in part to reflect the liberalized market environment that will result from the WTO Basic Telecom Agreement. Specifically, the Commission adopts an open entry standard for applicants seeking to access satellite systems from WTO Members providing satellite services covered by the U.S. Schedule of Commitments under the WTO Basic Telecom Agreement (Fixed Satellite Services and Mobile Satellite Services (MSS)).[11] The Commission presumes that entry will be competitive in these cases. The Commission reserves the right, however, to attach conditions to a grant of authority or, in exceptional circumstances, where conditions may not adequately constrain the potential for anticompetitive harm in the U.S. market, to deny an application. In deciding whether to grant non-WTO country satellites access to the U.S. market or whether to allow any non-U.S. satellite to provide non-covered services in the United States, the Commission adopts the ''ECO-Sat test.'' This test requires that U.S. satellite operators have ''effective competitive opportunities'' in the foreign market before allowing a satellite licensed by that country access into the United States.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

21. No comments were filed in direct response to the questions posed in the IRFA in either the NPRM or the FNPRM. In reply comments to the NPRM, however, NATSAT argues that the Commission should not apply the ECO-Sat test to applications filed on or before

[11] Non-covered services are those not contained in the U.S. Schedule of Commitments in the WTO Basic Telecom Agreement—Direct to Home (DTH), Direct Broadcast Service (DBS) or Digital Audio Service (DARS).

July 15, 1996 by ''designated entities'' to resell MSS service in the United States.[12] It claims that such an exemption would be consistent with the directive Section 309(j) to ensure that small businesses and minority entrepreneurs have the chance to participate in the provision of spectrum-based services. In the Report and Order, the Commission does not adopt an ECO-Sat test with respect to WTO-Member satellites providing WTO-covered services. Thus, small entities may access a large percentage of non-U.S. satellites without conducting an ECO-Sat analysis. Moreover, an ECO-Sat analysis is a minimal burden when compared to the possibility that unrestricted entry by foreign-licensed satellite systems would distort competition in the United States market.

III. Description and Estimate of the Number of Small Entities Subject to the Rules

22. The Commission has not developed its own definition of ''small entity'' for purposes of licensing satellite-delivered services. Accordingly, we rely on the definition of ''small entity'' provided under the Small Business Administration (SBA) rules applicable to Communications Services, Not Elsewhere Classified.[13] A ''small entity'' under these SBA rules is defined as an entity with $11.0 million or less in annual receipts.

IV. Summary of Projected Reporting, Record Keeping and Other Compliance Requirements

23. This Report and Order requires foreign-licensed systems serving the United States to comply with the same public interest standards that the Commission applies to U.S. satellites. First, foreign-licensed satellite systems must comply with the same technical requirements as a U.S.-licensed satellite system. Without examining its technical compatibility with U.S.-licensed satellites, a foreign-licensed satellite system may cause unacceptable interference with U.S. systems and possible service disruptions to customers.[14] Second, the Commssion requires foreign-satellite system applicants to comply with our financial rules, established under Section 308(b) of the Communications Act.[15] Reserving orbit locations or spectrum for future satellites without examining whether the operator is financially qualified to build a system, which often costs hundreds of millions of dollars, could block entry by other United States or foreign companies that have the financial capability to proceed, ultimately delaying service to the public. Third, foreign-licensed satellite systems must comply with the Commissions legal qualifications consistent with Sections 308 and 309 of the Communications Act.[16] The purpose of requiring compliance with legal requirements is to ensure that entities providing satellite services in the United States will abide by Commission rules. For example, certain information may provide relevant indicia of compliance. Violations of law by an applicant, particularly those relating to credibility, may be evidence that it will not comply with Commission rules. Thus, it is vital that the Commission obtain assurance that an applicant will follow the rules that the Commission has established over the years to maximize the development of efficient, compatible, and innovative satellite systems.

V. Significant Alternatives and Steps Taken By Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives

24. The Commission will apply the same rules to foreign-licensed systems as have been applied to U.S. licensed systems. This approach will not impose any additional burdens on foreign-licensed satellite systems, small or large. Earth station operators seeking to access a non-U.S. satellite will be required to provide the same information regarding the satellite that U.S. satellite applicants must provide. This information is needed to ensure that transmissions from the space station into the United States do not cause technical interference into existing U.S. operations and that other Commission public interest objectives are met. The Commission expects, however, that the satellite information will be provided by the satellite operator to the earth station applicant because of their mutual business objectives. Thus, there will be no economic impact on small businesses because there are no additional burdens being imposed. Certain information will not be required. First, where the international technical coordination process has been completed between the United States and the foreign satellite, additional technical information about that foreign satellite is not necessary. This is because the United States and the relevant foreign administration exchange extensive technical data about their respective systems during the course of the bilateral negotiations that lead up to a coordination agreement. This technical information is sufficient for us to determine whether the foreign satellite complies with Commission technical rules. The Commission finds that this new framework will benefit small businesses because earth station entities will have greater choice of space stations to access and opportunity to benefit from the other advantages of a more competitive market, such as reduced prices. In addition, small, local programmers will have access to a more competitive selection of satellite service providers. In this regard, our measures will advance the small business goals of Section 257 of the 1996 Act.

25. *Report to Congress:* The Commission will send a copy of the Report and Order including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). A summary of the Report and Order and this FRFA will also be published in the **Federal Register**, *see* 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

26. This Report and Order contains new or modified information collections. A request for clearance of the information collections proposed in the FNPRM was submitted to Office of Management and Budget (OMB) and approved on October 13, 1997.[17] The changes to the approved information collection adopted in this Report and Order will be submitted to OMB and will become effective upon approval by OMB.

Conclusion

27. In this Report and Order, the Commission adopts a new framework for foreign participation in the U.S. satellite services market, consistent with the United States' obligations under the WTO Basic Telecom Agreement. The common sense rules and procedures the Commission establishes will provide opportunities for non-U.S. entities to deliver satellite services in this country. The liberalized market conditions that should result from the WTO Basic Telecom Agreement will allow U.S. companies to enter previously closed foreign markets. These joint initiatives will benefit U.S. consumers by increasing the availability of various

[12] NATSAT NPRM Reply Comments at 11–15 citing 47 U.S.C. § 309(j).

[13] 1987 Standard Industrial Classification Manual; 13 CFR part 121.

[14] Report and Order at Section III.B.3.b.

[15] *Id.*

[16] *Id.*

[17] See OMB No. 3060–0678.

satellite services, providing more alternatives, reducing prices, and facilitating technological innovation. This new environment will encourage a more competitive satellite market in the United States, as well as spur development of broader, more global satellite systems. It will also foster greater opportunity for communications across national boundaries by making it easier for consumers worldwide to gain access to people, places, information, and ideas.

Ordering Clauses

28. Accordingly, *it is Ordered* that, pursuant to Sections 1, 2, 4(i), 303(r), 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 303(r), 308, 309, and 310, the policies, rules and requirements discussed herein *are adopted* and part 25 of the Commission's rules, 47 CFR part 25, *is amended* as set forth below.

29. *It is further ordered* that authority is delegated to the Chief, International Bureau as specified herein, to effect the decisions as set forth above.

30. *It is further ordered* that the Commission's Office of Managing Director shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

31. *It is further ordered* that the amendments to part 25 of the Commission's rules, 47 CFR part 25, FCC Form 312 and the Commission's policies, rules and requirements established in this *Report and Order* shall take effect January 5, 1998, or in accordance with the requirements of 5 U.S.C. § 801(a)(3) and 44 U.S.C. § 3507, whichever is later. The Commission will publish a notice, following publication of this Report and Order in the **Federal Register**, announcing the effective date. The Commission reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998.

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 25 of Chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

2. Section 25.113 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 25.113 Construction permits, station licenses, launch authority.

* * * * *

(b) Construction permits are not required for satellite earth stations that operate with U.S.-licensed or non-U.S. licensed space stations. * * *

* * * * *

3. Section 25.115 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * * *

(c) Large Networks of Small Antennas operating in the 12/14 GHz frequency bands with U.S.-licensed or non-U.S. licensed satellites for domestic services. * * *

* * * * *

4. Section 25.130 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

* * * * *

(d) Transmissions of signals or programming to non-U.S. licensed satellites, and to and/or from foreign points by means of U.S.-licensed fixed satellites may be subject to restrictions as a result of international agreements or treaties. * * *

* * * * *

5. Section 25.131 is amended by revising paragraphs (b) and (j) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

* * * * *

(b) Except as provided in paragraph (j) of this section, receive-only earth stations in the fixed-satellite service that operate with U.S.-licensed satellites may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251 through 25.256 of this part.

* * * * *

(j) Receive-only earth stations operating with non-U.S. licensed space stations shall file an FCC Form 312 requesting a license or modification to operate such station. Receive-only earth stations used to receive INTELNET I service from INTELSAT space stations need not file for licenses. See Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86–214 (released May 19, 1986) available through the International Reference Center, FCC, 2000 M St. NW., Washington, DC 20554.

6. A new § 25.137 is added to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.

(a) Earth station applicants or entities filing a ''letter of intent'' requesting authority to operate with a non-U.S. licensed space station to serve the United States must attach an exhibit with their FCC Form 312 application with information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in:

(1) The country in which the non-U.S. licensed space station is licensed; and

(2) All countries in which communications with the U.S. earth station will originate or terminate. The applicant bears the burden of showing that there are no practical or legal constraints that limit or prevent access of the U.S. satellite system in the relevant foreign markets. The exhibit required by this paragraph must also include a statement of why grant of the application is in the public interest. This paragraph shall not apply with respect to requests for authority to operate using a non-U.S. licensed satellite that is licensed by or seeking a license from a country that is a member of the World Trade Organization for services covered under the World Trade Organization Basic Telecommunications Agreement.

(b) Earth station applicants, or entities filing a ''letter of intent,'' requesting authority to operate with a non-U.S. licensed space station must attach to their FCC Form 312 an exhibit providing legal, financial, and technical information for the non-U.S. licensed space station in accordance with part 25 and part 100 of this Chapter. If the non-U.S. licensed space station is in orbit and operating, the applicant need not include the financial information specified in §§ 25.114 (c)(17) and (c)(18) of this part. If the international coordination process for the non-U.S.

licensed space station has been completed, the applicant need not include the technical information specified in §§ 25.114 (c) (5 through 11) and (c)(14) of this part, unless the technical characteristics differ from the characteristics established in that process.

(c) A non-U.S. licensed satellite system seeking to serve the United States can be considered contemporaneously with other U.S. satellite systems if it is:

(1) In orbit and operating;

(2) Has a license from another administration; or

(3) Has been submitted for coordination to the International Telecommunication Union.

[FR Doc. 97–31800 Filed 12–3–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 233
Thursday, December 4, 1997

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

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 610

RIN 0578–AA22

Technical Assistance

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: Section 342 of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) expands the membership and roles of State Technical Committees established pursuant to Section 1261 of the Food Security Act of 1985 (the 1985 Act), as amended. Under Section 1261, the Secretary must establish a technical committee in each State to assist in making technical considerations related to the implementation of the 1985 Act's conservation provisions. Consistent with the 1985 Act, the United States Department of Agriculture (USDA) uses these State Technical Committees in an advisory capacity.

This proposed rule sets forth the policies and procedures for the use of State Technical Committees by the USDA, the membership criteria, and the responsibilities assigned to these Committees. It also amends § 610.2 to reflect the responsibilities assigned to the Natural Resources Conservation Service (NRCS) beyond that of soil conservation. This proposed rule amends § 610.2 to acknowledge the NRCS mission to promote the long-term sustainability of all agricultural lands, including cropland, grazing land, pastureland, rangeland, and forestland.

DATES: Comments must be received by January 5, 1998.

ADDRESSES: All comments concerning this proposed rule should be addressed to: Gary Nordstrom, Director, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013–2890; Attention: State Technical Committee. Fax (202) 720–1838. This rule may also be accessed, and comments submitted, via Internet. Users can access the NRCS Federal Register homepage and submit comments at: http://astro.itc.nrcs.usda.gov:6500.

FOR FURTHER INFORMATION CONTACT: Denise Coleman, Conservation Operations Division, Natural Resources Conservation Service; phone: (202) 720–9476; Fax: (202) 720–4265; E-mail: denise__c.coleman@usda.gov, Attention: State Technical Committee.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Pursuant to Sec. 6(a)(3) of Executive Order 12866, the NRCS has conducted an economic analysis of the potential impacts associated with this proposed rule. Because it is not possible to measure all costs or benefits of State Technical Committee involvement in the decision-making process using strict benefit-cost techniques, a cost effect analysis was used. This analysis estimates that no material adverse effects on the economy, a sector of the economy, agricultural productivity, competition, jobs, the environment, public safety, or State, local, or tribal governments or communities are expected from implementation of this proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this proposed rule because USDA is not required by 5 U.S.C. 553 or any other provisions of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

NRCS has determined that this proposed rule is within the categorical exclusion for advisory and consultative activities under 7 CFR 1b.3(a)6; therefore, an environmental assessment was not conducted.

Paperwork Reduction Act

This proposed rule does not require identical collection of information. As a result, the Paperwork Reduction Act provisions do not apply.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, the effects of this rulemaking action on State, local, and tribal governments, and the public have been assessed. This action does not compel the expenditure of $100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this proposed rule as not major, therefore, pursuant to Section 304 of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354 a risk assessment was not required.

Background and Purpose

Section 1261 of the Food Security Act of 1985, as amended, sets out the membership and roles of the State Technical Committees. The Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6901 *et seq.*) exempts State Technical Committees from provisions of the Federal Advisory Committee Act (5 U.S.C. App.2).

NRCS proposes that State Technical Committee membership be expanded to consist of individuals who represent a variety of natural resource sciences and occupations, including those related to soil, water, wetlands, plants, and wildlife. USDA believes the membership expansion of State Technical Committees, which creates new sources of local conservation expertise, is a positive step. However, NRCS believes that the ultimate responsibility of the State Conservationist is to ensure that all interests are adequately represented on the Committee.

As a result of the passage of the 1996 Act, eligibility for State Technical Committee membership was expanded to include the private sector. In addition to these members, NRCS proposes to add additional agencies and groups based on their historical relationship with USDA and State Technical Committees. These member agencies

and groups included the following: Environmental Protection Agency, Bureau of Indian Affairs, U.S. Geological Survey, U.S. Army Corps of Engineers, State Farm Service Agency Committee, and Federally recognized American Indian Tribal Governments and Alaskan Native Corporations, encompassing 100,000 acres or more in the State.

The State Technical Committees shall include one representative from each of the following agencies or groups, unless the agency or group declines membership:

- NRCS, as Chairperson;
- Farm Service Agency;
- State Farm Service Agency Committee;
- Forest Service;
- Cooperative State Research, Education, and Extension Service;
- Rural Development;
- Fish and Wildlife Service;
- Bureau of Land Management;
- Bureau of Indian Affairs;
- U.S. Geological Survey;
- U.S. Army Corps of Engineers;
- Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations, encompassing 100,000 acres or more in the State;
- State departments and agencies which the NRCS State Conservationist deems appropriate, including a member from each of the following:

—State fish and wildlife agency;
—State forester or equivalent official;
—State water resources agency;
—State department of agriculture;
—State association of soil and water conservation districts;
—State coastal zone management agency; State soil and water conservation agency; and
—Other Federal, State, tribal and local agency representatives with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.

In addition to other Federal, State, tribal, and local agency and group membership, the State Technical Committees will include members from the following private interests, including:

- Agricultural producers with demonstrable conservation expertise;
- Nonprofit organizations with demonstrable conservation expertise;
- Persons knowledgeable about conservation techniques and programs; and
- Agribusiness.

To ensure that recommendations of the State Technical Committees take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

In accordance with the preceding paragraphs, the NRCS State Conservationist determines the membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee may submit to the NRCS State Conservationist for that State a request which explains their interest and outlines their credentials which they believe are relevant to becoming a member of the State Technical Committee. Decisions of the NRCS State Conservationist concerning membership on the committee are final and not appealable to any other individual or group.

State Technical Committee meetings are open to the public. This rule proposes that the State Conservationist provide public notice of meetings that consider issues relating to particular conservation programs. The State Conservationist will publish a meeting notice no later than 7 calendar days prior to the meeting. Notification may exceed this 7 day minimum where State open meeting laws exist and require a longer notification period. NRCS proposes that this notice be published in one or more newspaper(s), including Tribally-recommended publications, to achieve statewide notification. The State Conservationist will schedule and conduct the meetings, although meetings may be requested by any USDA agency as needed.

In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and refine specific issues. The State Conservationist, may assemble certain members to discuss, examine, and focus on a particular technical or programmatic topic. In such situations, where subcommittee meetings occur, public notification and participation are not necessary. Nevertheless, decisions resulting from these subcommittee sessions shall be made only in a general session of the State Technical Committee, where the public is notified and invited to attend.

The State Technical Committees have no implementation or enforcement authority. However, the Committees' advisory capacity extends to many of the USDA conservation programs. As set forth in Section 1262 of the 1985 Act (16 U.S.C. 3862(c)), the responsibilities of the State Technical Committee include recommendations on matters such as:

- The technical aspects of wetland protection, restoration, and mitigation requirements;
- Guidelines for haying or grazing and the control of weeds to protect nesting wildlife on set-aside acreage;
- Highly erodible land exemptions and appeals;
- Wetland and highly erodible land conservation compliance exemptions and appeals;
- Methods to address common weed and pest problems and programs to control weeds and pests found on acreage enrolled in the Conservation Reserve Program (16 U.S.C. 3831–3836);
- Guidelines for planting perennial cover for water quality and wildlife habitat improvement on set-aside lands;
- Criteria and priorities for state initiatives under the Environmental Quality Incentives Program (EQIP) under chapter 4 of subtitle D; and

Section 1262 of the 1985 Act (16 U.S.C. 3862(c)(8)) also provides that State Technical Committees may offer recommendations on other matters determined appropriate by the NRCS State Conservationist. USDA will seek State Technical Committee recommendations including, but not limited to, the following:

- The establishment of the Wildlife Habitat Incentives Program (WHIP), as set forth in Section 387 of the 1996 Act (16 U.S.C 3836a);
- The development of a Wetland Reserve Program (WRP) (16 U.S.C. 3837) wetland restoration plan;
- Program assistance to Environmental Quality Incentive Program (EQIP) participants with significant statewide resource concerns outside a priority area, 7 CFR part 1466;
- Eligible conservation practices for an EQIP priority area or for significant statewide resource concerns outside a priority area, 7 CFR part 1466;
- Criteria to be used in defining a large confined livestock operation under EQIP, 7 CFR part 1466;
- Suggestions on how often producers' EQIP applications are ranked and selected, 7 CFR part 1466;
- Criteria to prioritize applications from applicants with significant statewide resource concerns outside a priority area, 7 CFR part 1466;
- Statewide program guidelines applicable to WRP easement compensation, restoration planning, priority ranking, and related policy matters, 7 CFR part 1467;
- Determination of cost share and incentive payment limits for participants subject to environmental requirements or with significant statewide resource concerns outside a

priority area, under the EQIP provision, 7 CFR part 1466;

• Identification of any categories of conversion activities and conditions which are routinely determined by NRCS to have minimal effect on wetland functions and values as described in 7 CFR part 12; and

• Types or classes of wetland that are not eligible for mitigation exemption, under the Wetland Conservation provisions, 7 CFR part 12.

Technical Assistance

The NRCS delivers the majority of the technical assistance provided to private landowners pursuant to 7 CFR 610.2. Section 610.2 has not yet been revised to provide for the responsibilities assigned to the NRCS beyond that of soil conservation (16 U.S.C 2005). To reflect the broader mission of NRCS, particularly as it relates to technical assistance provided to private grazing land (16 U.S.C. 2005b), NRCS is amending § 610.2 to acknowledge that one of NRCS' missions is to improve the quality of all agricultural lands, including grazing land, pastureland, rangeland, forestland, and cropland so that the long-term sustainability of the resource base is achieved.

List of Subjects in 7 CFR Part 610

Soil conservation, Technical assistance, Water resources.

Accordingly part 610 of Title 7 of the Code of Federal Regulations is amended as follows:

PART 610—[AMENDED]

1. The authority for part 610 is revised to read as follows:

Authority: 16 U.S.C. 590a–f, 590q, 2005, 2005b.

2. Section 610.2 is revised to read as follows:

§ 610.2 Scope.

(a) Conservation operations, including technical assistance, is the basic soil and water conservation program of NRCS. This program is designed to provide assistance to:

(1) Reduce soil losses from erosion;

(2) Help solve soil, water, and agricultural waste management problems;

(3) Bring about adjustments in land use as needed;

(4) Reduce damage caused by excess water and sedimentation; and

(5) Improve the quality of all agricultural lands, including grazing land, pastureland, rangeland, forestland, and cropland so that the long-term sustainability of the resource base is achieved.

(b) The Natural Resources Conservation Service is the technical agency of the U.S. Department of Agriculture for providing assistance to conservation districts and other organizations in planning and carrying out their conservation programs. NRCS works with individuals, groups, and units of government to help them plan and carry out conservation decisions to meet their objectives.

3. A new Subpart C is added to read as follows:

Subpart C—State Technical Committees

Sec.
610.21 Purpose and scope.
610.22 State Technical Committee membership.
610.23 State Technical Committee meetings.
610.24 Responsibilities of State Technical Committees.

§ 610.21 Purpose and scope.

This subpart sets forth the procedures for establishing and utilizing the advice of State Technical Committees. USDA will use State Technical Committees in an advisory capacity in the administration of certain conservation programs and initiatives. These State Technical Committees are exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). The NRCS shall establish in each State a technical committee to assist in making technical recommendations relating to the implementation of conservation provisions. This subpart sets forth the membership guidelines and responsibilities of the State Technical Committees.

§ 610.22 State Technical Committee membership.

(a) State Technical Committees shall include members who represent a variety of natural resource sciences and occupations, including those related to soil, water, wetlands, plants, and wildlife. The State Conservationist is to ensure that all interests are equally represented. Committee membership includes one representative from the following agencies or groups, if willing to serve:

(1) NRCS, as Chairperson;

(2) Farm Service Agency;

(3) State Farm Service Agency Committee;

(4) Forest Service;

(5) Cooperative State Research, Education, and Extension Service;

(6) Rural Development;

(7) Fish and Wildlife Service;

(8) Environmental Protection Agency;

(9) Bureau of Land Management;

(10) Bureau of Indian Affairs;

(11) U.S. Geological Survey;

(12) U.S. Army Corps of Engineers;

(13) Each of the Federally recognized American Indian Tribal Governments and Alaskan Native Corporations encompassing 100,000 acres or more in the State;

(14) State departments and agencies which the NRCS State Conservationist deems appropriate, including a member from each of the following:

(i) State fish and wildlife agency;

(ii) State forester or equivalent official;

(iii) State water resources agency;

(iv) State department of agriculture;

(v) State association of soil and water conservation districts;

(vi) State soil and water conservation agency;

(vii) State coastal zone management agency; and

(15) Other Federal, State, tribal, and local agency personnel with expertise in soil, water, wetlands, plant, and wildlife management, as the NRCS State Conservationist considers appropriate.

(b) In addition to agency membership, State Technical Committees shall contain members from the following private interests, including:

(1) Agricultural producers with demonstrable conservation expertise;

(2) Nonprofit organizations with demonstrable expertise;

(3) Persons knowledgeable about economic and environmental impacts of conservation techniques and programs; and

(4) Agribusiness.

(c) To ensure that recommendations of the State Technical Committees take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, the State Conservationist determines membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee within a specific State may submit to the State Conservationist of that particular State a request which explains their interest and outlines their credentials which they believe are relevant to becoming a member of the State Technical Committee. Decisions of the State Conservationist concerning membership on the committee are final and not appealable to any other individual or group within USDA.

§ 610.23 State Technical Committee meetings.

(a) The State Conservationist of each State chairs the State Technical Committee. State Technical Committees shall provide public notice of meetings that consider issues related to conservation programs. The State Conservationist shall publish a meeting notice no later than 7 calendar days prior to the meeting. Notification may exceed this 7-day minimum where State open meeting laws exist and require a longer notification period. The State Conservationist shall publish this notice in at least one or more newspaper(s), including Tribally-recommended publications, to attain statewide circulation.

(b) The State Conservationist, as Chairperson, schedules and conducts the meetings, although a meeting may be requested by any USDA agency as needed.

§ 610.24 Responsibilities of State Technical Committees.

(a) Each State Technical Committee established under this subpart shall meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations.

(b) The State Technical Committee shall provide, in writing to the implementing USDA program agency, recommendations, data, and technical analyses, which reflect the professional information and judgment of the State Technical Committee. Such information, analyses, and recommendations shall be provided in a manner that will assist in determining matters of fact, technical merit, or scientific question.

(c) The implementing agency reserves the authority to accept or reject the Committee's recommendations; however, the implementing agency shall give strong consideration to the Committee's suggestions.

Signed in Washington, D.C. on November 28, 1997.

Thomas A. Weber,

Acting Chief, Natural Resources Conservation Service.

[FR Doc. 97–31727 Filed 12–3–97; 8:45 am]

BILLING CODE 3410–16–P

EXPORT–IMPORT BANK OF THE UNITED STATES

12 CFR Parts 404 and 405

Comprehensive Revision of Export-Import Bank of the United States Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: Export-Import Bank of the United States.

ACTION: Proposed rule.

SUMMARY: This document sets forth proposed comprehensive revisions of the Export-Import Bank's Freedom of Information Act (FOIA) and Privacy Act regulations. The regulations are intended to supersede the Export-Import Bank's current FOIA and Privacy Act regulations, found at 12 CFR parts 404 and 405, respectively. The Export-Import Bank (Ex-Im Bank) is proposing the following revisions in order to provide more ''user-friendly'' regulations that are consistent with current law, including the Electronic Freedom of Information Act Amendments of 1996. The proposed regulations also include updated fee schedules.

DATES: Submit comments on or before February 2, 1998.

ADDRESSES: Address all comments concerning this proposed rule to Howard A. Schweitzer, Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW, Room 963, Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Howard A. Schweitzer, (202) 565–3229.

SUPPLEMENTARY INFORMATION: This is a comprehensive revision of 12 CFR part 404 (Ex-Im Bank's current FOIA regulations) and 12 CFR part 405 (Ex-Im Bank's current Privacy Act regulations). The proposed part 404 contains Ex-Im Bank's regulations for the FOIA, found in subpart A, and the Privacy Act, found in subpart B. The proposed part 404 does not contain any regulations concerning ''appearance and testimony by Ex-Im Bank officers and employees,'' currently found at 12 CFR 404.8. Ex-Im Bank is removing and reserving part 405 for publication of new regulations entitled ''production and disclosure in federal or state proceedings.''

The proposed FOIA regulations, in addition to setting forth Ex-Im Bank's basic FOIA policy and procedure, include provisions, found in § 404.7, to implement Executive Order 12600, ''Predisclosure Notification Procedures for Confidential Commercial Information.'' The regulations also set forth a revised ''schedule of fees,'' found in § 404.8. The proposed changes include increases in the hourly fees for clerical and professional time to $16.00 and $32.00, respectively, and a decrease in duplication charges, from $.25 to $.10 per photocopy. New provisions implementing the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231) can be found in § 404.3 (public reference facilities), § 404.5 (time for processing), and § 404.8(d) (material withheld). The proposed regulations also establish, in § 404.11 (administrative appeal), the Ex-Im Bank Assistant General Counsel for Administration as the appellate authority for administrative appeals under the FOIA.

The proposed Privacy Act regulations, set forth Ex-Im Bank's basic Privacy Act policy and procedures. The regulations also include the following provisions concerning matters not previously addressed: § 404.19 (notice of subpoenas and emergency disclosures); § 404.20 (request for accounting of record disclosures); § 404.21 (submission of social security and passport numbers); § 404.22 (contracting record systems); and § 404.26 (employee standards of conduct).

Regulatory Flexibility Act

The Ex-Im Bank President and Chairman, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has certified that this regulation will not have a significant economic impact on a substantial number of small entities. Under the Freedom of Information Act, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Under the Privacy Act, agencies may recover only duplication costs. Thus, fees assessed by Ex-Im Bank under these regulations will be nominal. Also, Ex-Im Bank receives, on average, less than two hundred FOIA and Privacy Act requests per year, and only one in four of those requests is made by a small entity.

Certification

In accordance with the Regulatory Flexibility Act, I hereby certify that the proposed Freedom of Information Act and Privacy Act regulations of the Export-Import Bank of the United States will not have a significant economic impact on a substantial number of small entities.

James A. Harmon,

President and Chairman.

Dated: November 20, 1997.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with the Executive Order. The Office of Management and Budget has determined that this rule is not a ''significant regulatory action,'' as defined by the Executive Order.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a ''major rule,'' as defined by the Small Business Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

12 CFR Part 404

Administrative practice and procedure, Freedom of Information, Privacy.

12 CFR Part 405

Administrative practice and procedure, Privacy.

For the reasons stated in the preamble, Ex-Im Bank proposes to amend 12 CFR Chapter IV as follows:

1. 12 CFR part 404 is revised to read as follows:

PART 404—INFORMATION DISCLOSURE

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.
404.1 General provisions.
404.2 Definitions.
404.3 Public reference facilities.
404.4 Request requirements.
404.5 Time for processing.
404.6 Release of records under the Freedom of Information Act.
404.7 Confidential business information.
404.8 Initial determination.
404.9 Schedule of fees.
404.10 Fee waivers or reductions.
404.11 Administrative appeal.

Subpart B—Protection of Privacy and Access to Records Under the Privacy Act of 1974

Sec.
404.12 General Provisions.
404.13 Definitions.
404.14 Requirements of request for access.
404.15 Initial determination.
404.16 Schedule of fees.
404.17 Appeal of denials of access.
404.18 Requests for correction of records.
404.19 Request for accounting of record disclosures.
404.20 Notice of court-ordered and emergency disclosures.
404.21 Submission of social security and passport numbers.
404.22 Government contracts.
404.23 [Reserved.]
404.24 [Reserved.]
404.25 [Reserved.]
404.26 Employee standards of conduct.
404.27 Other rights and services.

Authority: 5 U.S.C. 552 and 552a. Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235. Section 404.21 issued under Pub. L. 93–579 sec. 7.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 404.1 General Provisions.

(a) *Purpose.* This subpart establishes policy, procedures, requirements, and responsibilities for administration of the Freedom of Information Act (FOIA), 5 U.S.C. 552, at the Export-Import Bank of the United States (Ex-Im Bank).

(b) *Policy.* It is Ex-Im Bank's policy to honor all requests for the disclosure of its records, provided that disclosure would not adversely affect a legitimate public or private interest and would not impose an unreasonable burden on Ex-Im Bank. However, this subpart also recognizes that the soundness of many Ex-Im Bank programs depends upon the receipt of reliable commercial, technical, financial, and business information relating to applicants for Ex-Im Bank assistance and that receipt of such information depends on Ex-Im Bank's ability to hold such information in confidence. Consequently, except as provided by applicable law, information provided to Ex-Im Bank in confidence will not be disclosed without the submitter's consent.

(c) *Scope.* All record requests made to Ex-Im Bank shall be processed under this subpart, except that information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this subpart. Requests made by individuals under the Privacy Act of 1974 which are processed under subpart B of this part also shall be processed under subpart A.

(d) *Ex-Im Bank Internet site.* Ex-Im Bank maintains an Internet site at ''http://www.exim.gov.'' The site contains information on Ex-Im Bank functions, activities, and programs, and transactions. Web site visitors have access to Board of Directors and Loan Committee meeting minutes, country information, and Ex-Im Bank press releases, among other information. Ex-Im Bank encourages all prospective FOIA requesters to visit the site prior to submission of a FOIA request.

(e) *Delegation.* Any action or determination in this subpart which is the responsibility of a specific Ex-Im Bank employee, may be delegated to a duly designated alternate.

(f) *Ex-Im Bank address.* The Export-Import Bank of the United States is located at 811 Vermont Avenue, NW, Washington, DC 20571.

§ 404.2 Definitions.

For purposes of this subpart, the following definitions shall apply:

All other requesters—requesters other than commercial use requesters, educational and non-commercial scientific requesters, or representatives of the news media.

Appeal—a written request to the Ex-Im Bank Assistant General Counsel for Administration for reversal of an adverse initial determination.

Business information—trade secrets or other potentially confidential commercial or financial information, provided to Ex-Im Bank by a business submitter.

Business submitter—any person who provides business information to Ex-Im Bank.

Commercial use request—a request for a use or purpose that furthers the commercial, trade or profit interest of the requester.

Direct costs—expenditures incurred in the search, review, and duplication of records in response to a FOIA request. These are based upon the salary of the employee performing the work and the cost of operating any necessary equipment.

Educational institution—a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education.

Final determination—the written decision by the Assistant General Counsel for Administration on an appeal.

Initial determination—the initial written determination by Ex-Im Bank

regarding disclosure of requested records.

Non-commercial scientific institution—an institution that is operated for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry and that is not operated solely for purposes of furthering a business, trade or profit interest.

Person—an individual, partnership, corporation, association or organization other than a Federal government agency.

Record—all papers, memoranda or other documentary material, or copies thereof, regardless of physical form or characteristics, created or received by Ex-Im Bank and preserved as evidence of the activities of Ex-Im Bank. ''Record'' does not include publications which are available to the public through the **Federal Register**, sale or free distribution.

Redaction—the process of removing non-disclosable material from a record so that the remainder may be released.

Representative of the news media—a person actively gathering information on behalf of an entity organized and operated to publish or broadcast news to the public. Freelance journalists shall qualify as representatives of the news media when they can demonstrate that a request is reasonably likely to lead to publication.

Request—any record request made to Ex-Im Bank under the FOIA.

Requester—any person making a request.

Review—the process of examining a record to determine whether any portion is required to be withheld. It includes redaction, duplication, and any other preparation for release. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

Search—the process of identifying and collecting records pursuant to a request.

Trade secrets—all forms and types of financial, business, scientific, technical, economic or engineering information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes.

Unusual circumstances—the need to search for and collect requested records from facilities that are separate from Ex-Im Bank headquarters; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation with another agency having a substantial interest in the determination of the request.

Working days—all calendar days excluding Saturdays, Sundays, and Federal Government holidays.

§ 404.3 Public reference facilities.

Ex-Im Bank maintains a public reading room which contains the Ex-Im Bank records that the FOIA requires to be made available for public inspection and copying. The records available under this section include copies of records released pursuant to the FOIA that Ex-Im Bank determines have, or are likely to, become the subject of subsequent requests for substantially the same records. Requesters shall be responsible for the cost of duplicating such material in accordance with the provisions of § 404.9(e). Persons desiring to use the reading room should contact the Ex-Im Bank Freedom of Information and Privacy Office, either in writing at the address at § 404.1(f) or by telephone at (202) 565–3946 or (800) 565–3946, to arrange a time to inspect the available records. Ex-Im Bank also provides electronic access to reading room records created after November 1, 1996.

§ 404.4 Request requirements.

(a) *Form*. Requests must be made in writing and must be signed by, or on behalf of, the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.1(f) and should contain both the return address and telephone number of the requester.

(b) *Description of records requested*. Each request must describe the records sought in sufficient detail so as to enable a professional employee of Ex-Im Bank familiar with the subject matter of the request to locate the record with a reasonable amount of effort. A request shall not be deemed to have been received until such time as the request adequately identifies the records sought. To the extent practicable, a description should include relevant dates, format, subject matter, and the name of any person to whom the record is known to relate. A general request for records with no accompanying date restriction, either express or implied, shall be deemed to be a request for records created within the preceding twelve months.

(c) *Fee statement*. The request must contain a statement expressing willingness to pay fees for the requested records or a request for a fee waiver (see § 404.10) before the request shall be deemed to have been received. A fee statement may specify the maximum amount a requester is willing to pay for processing the request.

(1) Whenever a requester submits a FOIA request that does not contain a fee statement or a request for a fee waiver, Ex-Im Bank shall advise the requester of the requirements of paragraph (c) of this section. If the requester fails to respond within ten working days of such notification, then the Freedom of Information and Privacy Office shall notify the requester, in writing, that Ex-Im Bank will not process the request.

(2) A general statement by the requester expressing willingness to pay all applicable fees under § 404.9 shall be deemed an agreement to pay up to $50.00. If Ex-Im Bank estimates that the fees for a request will exceed $50.00, then Ex-Im Bank shall offer the requester the opportunity to agree, in writing, either to pay a greater fee or to modify the request as a means of limiting the cost.

(d) *Written notice of amendment*. The requester must provide any amendment to the original request in writing to Ex-Im Bank.

(e) *Requester assistance*. Ex-Im Bank shall make reasonable efforts to assist a requester in complying with the requirements of this section.

§ 404.5 Time for processing.

(a) *General*. Ex-Im Bank shall respond to requests within twenty working days of the date of receipt of the request unless unusual circumstances exist. Ex-Im Bank shall provide written notice to the requester whenever such unusual circumstances necessitate an extension. If the extension is expected to exceed ten working days, then Ex-Im Bank shall offer the requester the opportunity to:

(1) Alter the request so that it may be processed within the time limit; or

(2) Propose an alternative, feasible time frame for processing the request.

(b) *Date of receipt*. A request shall be deemed to have been received on the date that the request is received in the Freedom of Information and Privacy Office, provided that the requester has met all the requirements of § 404.4. Ex-Im Bank shall notify the requester of the date on which a request was officially received.

(c) *Order of processing*. Ex-Im Bank ordinarily shall process requests according to their order of receipt.

(d) *Expedited processing*. A request for expedited processing must be included in the original request for records and may be granted at the discretion of Ex-Im Bank based upon the requester's demonstration of:

(1) An imminent threat to the life or physical safety of an individual; or

(2) In the case of a requester who is a representative of the news media, an urgency to inform the public concerning actual or alleged Federal Government activity. Ex-Im Bank shall provide notice of its determination on expedited processing to the requester. A requester may file an administrative appeal, as set forth at § 404.11, based on a denial of a request for expedited processing. Ex-Im Bank shall grant expeditious consideration to any such appeal.

§ 404.6 Release of records under the Freedom of Information Act.

(a) *Creation of records.* A reasonable request for material not in existence may be honored at Ex-Im Bank's discretion when tabulation or compilation will not significantly burden Ex-Im Bank, its programs or its activities.

(b) *Discretionary release.* Consistent with federal government policy, material technically qualifying for exemption from disclosure under 5 U.S.C. 552(b) may be made available when disclosure would not adversely affect legitimate public or private interests, violate law or impose an unreasonable burden on Ex-Im Bank. This policy does not, however, create any right enforceable in a court of law.

(c) *Segregable records.* Whenever it is determined that a portion of a record is exempt from disclosure, any reasonably segregable portion of the record shall be provided to the requester after redaction of the exempt material. If segregation would render the document meaningless, Ex-Im Bank shall withhold the entire record.

(d) *Date for determining responsive records.* Only those records within Ex-Im Bank's possession and control as of the date of receipt of a request shall be deemed to be responsive to a request.

§ 404.7 Confidential business information.

(a) *Scope.* This section applies to all business information, as defined in § 404.2. Such information shall only be disclosed pursuant to a FOIA request in accordance with this section.

(b) *Submitter designation.* All business submitters should designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of any submission that they consider to be exempt from disclosure under 5 U.S.C. 552(b)(4).

(c) *Pre-disclosure notice to the business submitter.* Whenever Ex-Im Bank receives a FOIA request seeking disclosure of business information, Ex-Im Bank shall provide prompt written notice to the submitter of such information. This notice shall include a description or a copy of the records containing the business information. Such notice shall not be required, however, if:

(1) Ex-Im Bank determines that the records shall not be disclosed;

(2) The records have been published or otherwise made available to the public; or

(3) Disclosure of the records is required by law.

(d) *Opportunity to object to disclosure.* The business submitter shall have ten working days from and including the date of the notification letter to provide Ex-Im Bank with a detailed statement of any objection to disclosure of the records. A submitter located outside the United States shall have twenty working days to object to disclosure. Ex-Im Bank may extend the time for objection upon timely request from the submitter and for good cause shown. A statement of objection must specify all grounds under the FOIA for withholding the information.

(e) *Notice to the requester.* The Freedom of Information and Privacy Office shall notify the requester in writing whenever a business submitter is afforded the opportunity to object to disclosure of records pursuant to paragraph (c) of this section.

(f) *Disclosure of confidential business information.* Ex-Im Bank shall consider any objections raised by the business submitter prior to making its disclosure decision.

(g) *Notice of intent to disclose.* Whenever Ex-Im Bank determines to disclose business information over the objection of a business submitter, Ex-Im Bank shall notify the business submitter, in writing, of such determination, the reasons for the decision, and the expected disclosure date. This notification—which shall be provided at least ten days prior to the planned disclosure date and which shall include a copy or description of the records at issue—is intended to afford the submitter the opportunity to seek judicial relief.

(h) *Notice to requester of disclosure date.* If Ex-Im Bank determines to disclose records over a business submitter's objection, then Ex-Im Bank shall notify the requester of the expected disclosure date.

(i) *Appeal.* Whenever Ex-Im Bank determines to disclose, pursuant to an administrative appeal, business information which initially was withheld from disclosure under 5 U.S.C. 552(b)(4), Ex-Im Bank shall notify the business submitter. Such notice shall be in writing and shall be provided ten working days prior to the proposed disclosure date. It shall include a copy or description of the records at issue and a statement of Ex-Im Bank's reasons for disclosure.

(j) *Notice of FOIA lawsuit.* Ex-Im Bank shall promptly notify the submitter or requester whenever a requester or submitter brings suit against Ex-Im Bank seeking to compel or restrict the release of business information covered by this section.

(k) *Exception.* Notwithstanding the foregoing provisions of this part, Ex-Im Bank may, upon request or on its own initiative, publicly disclose the parties to transactions for which Ex-Im Bank approves support, the amount of such support, the identity of any U.S. participants involved, a general description of the related U.S. exports, and the country to which such exports are destined.

§ 404.8 Initial determination.

(a) *Authority to grant or deny requests.* The Freedom of Information and Privacy Office shall be responsible for search, review, and the Initial Determination.

(b) *Referrals to other government agencies.* A requested record in Ex-Im Bank's possession which was created or classified by another federal government agency shall be referred to such agency for direct response to the requester. The Freedom of Information and Privacy Office shall notify the requester of any such referral, the number of documents so referred, and the name and address of each agency to which the request has been referred.

(c) *Notification of Ex-Im Bank action.* The Freedom of Information and Privacy Office shall notify the requester in writing of its decision to grant or deny the request.

(1) If the decision is made to grant a request, then Ex-Im Bank shall promptly disclose the requested records and shall inform the requester of any fee payable under § 404.9.

(2) A denial is a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; or a determination that what has been requested is not a record subject to the FOIA. Whenever Ex-Im Bank withholds information, such notice shall include:

(i) The name, title, and signature of the person responsible for the determination;

(ii) The statutory basis for any non-disclosure; and

(iii) A statement that any denial may be appealed under § 404.11 and a brief description of the requirements of that section.

(d) *Material withheld.* Ex-Im Bank shall make reasonable efforts to inform the requester of the volume of material withheld pursuant to a full or partial denial and the extent of any redaction. Ex-Im Bank shall not, however, indicate the extent of any denial when doing so could harm an interest protected by an applicable exemption.

§ 404.9 Schedule of fees.

(a) *General.* Ex-Im Bank shall charge fees to recover the full allowable direct costs it incurs in processing requests. Ex-Im Bank shall attempt to conduct searches in the most efficient manner to minimize costs for both Ex-Im Bank and the requester.

(b) *Categories of requesters.* Fees shall be assessed according to the status of the requester. The specific schedule of fees for each requester category (each as defined in § 404.2) is prescribed as follows:

(1) *Commercial use requesters.* Ex-Im Bank shall charge the full costs for search, review, and duplication.

(2) *Educational and non-commercial scientific institution requesters.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(3) *Representatives of the news media.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(4) *All other requesters.* Ex-Im Bank shall charge for the cost of search, review, and duplication, except that 100 pages of duplication and two hours of professional search time shall be furnished without charge.

(c) *Search and review fees.* Ex-Im Bank shall charge the following fees for search and review:

(1) *Clerical.* Hourly rate—$16.00.

(2) *Professional.* Hourly rate—$32.00.

(3) *Computer Searches.* Hourly rate—based upon the salary of the employee performing the work and the cost of operating any equipment.

(d) *Administrative appeals.* Ex-Im Bank shall not charge for administrative review of an exemption applied in an initial determination. Ex-Im Bank shall charge, however, for search and review pursuant to an administrative appeal if the appeal is based on a claim other than the application of an exemption in the initial determination.

(e) *Duplication.* Ex-Im Bank shall charge $.10 per page for paper copy duplication. Ex-Im Bank shall charge the actual or estimated cost of copies prepared by computer, such as tape or printouts, or for other methods of duplication. When duplication charges are expected to exceed $50.00, Ex-Im Bank shall seek the requester's consent to be responsible for the estimated charges unless a requester has already expressed a willingness to pay duplication fees in excess of $50.00. Ex-Im Bank shall also offer the requester the opportunity to alter the request in order to reduce duplication costs.

(f) *Fees for searches that produce no records.* Fees shall be payable as provided in this section even though searches and review do not generate any disclosable records.

(g) *Aggregating requests.* A requester, or a group of requesters acting in concert, shall not file multiple requests, seeking portions of a record or similar or related records, in order to avoid payment of fees. Ex-Im Bank shall aggregate any such requests and charge as if the requests were a single request.

(h) *Special services charges.* Complying with requests for special services such as those listed in this paragraph is entirely at the discretion of Ex-Im Bank. Ex-Im Bank shall recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* Ex-Im Bank shall charge $25.00 to certify the authenticity of any Ex-Im Bank record or any copy of such record.

(2) *Special shipping.* Ex-Im Bank may ship by special means (e.g., express mail) if the requester so desires, provided that the requester has paid or has expressly undertaken to pay all costs of such special services. Ex-Im Bank shall not charge for ordinary packaging and mailing.

(i) *Restrictions.* (1) Ex-Im Bank shall waive a final fee of $5.00 or less.

(2) Whenever Ex-Im Bank estimates that the fees are likely to exceed $250.00, Ex-Im Bank shall notify the requester of the likely cost and shall require an advance payment of an amount up to the full estimated charges.

(3) Ex-Im Bank shall not process a request by a requester who has failed to pay a fee for a previous request unless and until such a requester had paid the full amount owed and also has paid, in advance, the total estimated charges for the new request. The administrative time limits for the new request—set forth in § 404.5—shall begin to run only after Ex-Im Bank has received the payments described in this section.

§ 404.10 Fee waivers or reductions.

(a) *General.* Upon request, Ex-Im Bank shall consider a discretionary fee waiver or reduction of the fees chargeable under § 404.9.

(b) *Form of request for fee waiver.* Ex-Im Bank shall deny a request for a waiver or reduction of fees that does not clearly address each of the following:

(1) The proposed use of the records and whether the requester will derive income or other benefit from such use;

(2) An explanation of the reasons why the public will benefit from such use; and

(3) If specialized use of the records is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(d) *Burden of proof.* In all cases, the requester has the burden of presenting sufficient evidence or information to justify the fee waiver or reduction. The requester may use the procedures set forth in § 404.11 to appeal a denial of a fee waiver request.

(e) *Employee requests.* Fees of less than $50.00 shall be waived in connection with any request by an employee, former employee, or applicant for employment, related to a grievance or complaint of discrimination against Ex-Im Bank.

§ 404.11 Administrative appeal.

(a) *General.* Whenever a request for records, a fee waiver or expedited processing has been denied, the requester may appeal the denial within thirty working days of the date of Ex-Im Bank's issuance of notice of such action. Any denial under this subpart must be appealed according to this section before a requester is eligible to seek judicial review.

(b) *Form.* Appeals must be made in writing and must be signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address at § 404.1(f). Both the envelope and the appeal letter should be clearly marked in capital letters: ''FREEDOM OF INFORMATION ACT APPEAL.'' Failure to properly mark or address the appeal may slow its processing. The letter should include:

(1) A copy of the denied request or a description of the records requested;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied;

(4) The Ex-Im Bank identification number assigned to the request; and

(5) The return address and telephone number of the appellant.

(c) *Processing schedule.* Appeals shall not be deemed to have been received until the Assistant General Counsel for Administration receives the appeal. Ex-Im Bank shall notify the requester of the date on which an appeal was officially received. The disposition of an appeal shall be made in writing within twenty working days after the date of receipt of

an appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days if unusual circumstances exist, provided that the Assistant General Counsel for Administration notifies the requester in writing.

(d) *Ex-Im Bank decision.* A final determination which affirms an adverse initial determination shall set forth the reasons for affirming the denial and shall advise the requester of the right to seek judicial review. If the initial determination is reversed on appeal, the request shall be remanded to the Freedom of Information and Privacy Office to be processed promptly in accordance with the decision on appeal, subject to § 404.7(i). Subpart B—Protection of Privacy and Access to Records Under the Privacy Act of 1974

§ 404.12 General provisions.

(a) *Purpose.* This subpart establishes policies, procedures, requirements, and responsibilities for administration of the Privacy Act of 1974, 5 U.S.C. 552a, at the Export-Import Bank of the United States (Ex-Im Bank).

(b) *Relationship to the Freedom of Information Act.* The Privacy Act applies to records contained in a systems of records, as defined in § 404.13. If an individual submits a request for access to records and cites the Privacy Act, but the records sought are not contained in a Privacy Act system of records, then the request shall be processed only under subpart A of this part, Procedures for Disclosure of Records Under the Freedom of Information Act. All requests properly processed under subpart B shall also be processed under subpart A of this part.

(c) *Appellate authority.* The Ex-Im Bank Assistant General Counsel for Administration is the appellate authority for all Privacy Act requests.

(d) *Delegation.* Any action or determination in this subpart which is the responsibility of a specific Ex-Im Bank employee may be delegated to a duly designated alternate.

(e) *Ex-Im Bank address.* The Export-Import Bank of the United States is located at 811 Vermont Avenue, NW, Washington, DC 20571.

§ 404.13 Definitions.

For purposes of this subpart, the following definitions shall apply:

Appeal—a written request to the Ex-Im Bank Assistant General Counsel for Administration for reversal of an adverse initial determination.

Final determination—the written decision by the Assistant General Counsel for Administration on an appeal.

Individual—a citizen of the United States or an alien lawfully admitted for permanent residence.

Initial determination—the initial written determination in response to a Privacy Act request.

Record—any item, collection or grouping of information about an individual which is maintained within a system of records and which contains the individual's name or an identifying number, symbol or other identifying particular assigned to the individual.

Redaction—the process of removing non-disclosable material from a record so that the remainder may be released.

Request for access—a request to view a record.

Request for accounting—a request for a list of all disclosures of a record.

Reqeust for correction—a request to modify a record.

Requester—an individual who makes a request under the Privacy Act.

Review—the process of examining a record to determine whether any portion is required to be withheld.

Search—the process of identifying and collecting records pursuant to a request.

System of records—a group of any records under the control of an agency from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

Working days—all calendar days excluding Saturdays, Sundays, and Federal Government holidays.

§ 404.14 Requirements of request for access.

(a) *Form.* Requests for access must be made in writing and must be signed by the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester.

(b) *Description of records sought.* A request for access must describe the records sought in sufficient detail so as to enable Ex-Im Bank personnel to locate the system of records containing the records with a reasonable amount of effort. To the extent practicable, such description should include the nature of the record sought, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept. A requester may include his or her Social Security number in the request in order to facilitate the identification and location of the requested records.

(c) *Fee statement.* The request must contain a statement expressing willingness to pay fees for processing the request or a request for a fee waiver (see § 404.16(d)).

(1) Whenever a requester submits a request for access which does not contain a fee statement or a request for a fee waiver, Ex-Im Bank shall advise the requester of the requirements of this section. If the requester fails to respond within ten working days of such notification, then the Freedom of Information and Privacy Office shall notify the requester, in writing, that Ex-Im Bank will not process the request.

(2) A general statement by the requester expressing willingness to pay all applicable fees shall be deemed an agreement to pay up to $25.00. If Ex-Im Bank estimates that the fees for a request will exceed $25.00, then Ex-Im Bank shall notify the requester. Ex-Im Bank shall offer the requester the opportunity to agree, in writing, either to pay a greater fee or to modify the request as a means of limiting the cost.

(3) Whenever the estimated fee chargeable under this section exceeds $25.00, Ex-Im Bank reserves the right to require a requester to make an advance payment prior to processing the request.

(4) Ex-Im Bank shall not process a request by a requester who has failed to pay a fee for a previous request unless and until such requester had paid the full amount owed and also has paid, in advance, the total estimated charges for the new request.

(d) *Verification of identity.* An individual who submits a request for access must verify his or her identity. The request must include the requesters full name, current address, and date and place of birth. In addition, such requester must provide a notarized statement attesting to his or her identity.

(e) *Verification of guardianship.* When a parent or guardian of a minor or the guardian of a person judicially determined to be incompetent submits a request for access to records which relate to the minor or incompetent, such parent or guardian must establish:

(1) His or her own identity and the identity of the subject of the record in accordance with paragraph (d) of this section; and

(2) Parentage or guardianship of the subject of the record, either by providing a copy of the subject's birth certificate showing parentage or by providing a court order establishing guardianship.

(f) *Written notice of amendment.* The requester must provide any amendment to the original request in writing to Ex-Im Bank.

(g) *Requester assistance.* Ex-Im Bank shall make reasonable efforts to assist a requester in complying with the requirements of this section.

(h) *Date of receipt.* Requests for access shall be deemed to have been received on the date that the request is received by the Freedom of Information and Privacy Office, provided that all the requirements of this section have been met. Ex-Im Bank shall notify the requester of the date on which it officially received a request.

§ 404.15 Initial determination.

(a) *Time for processing.* The Freedom of Information and Privacy Office shall respond to valid requests for access within twenty working days of the date of receipt of the request letter. The time for response may be extended an additional ten working days for good cause, provided that the Freedom of Information and Privacy Office notifies the requester in writing.

(b) *Notice regarding request for access.* The Freedom of Information and Privacy Office shall notify the requester in writing of its decision to grant or deny a request for access.

(1) If the request is granted, then the notice shall either include the requested records, in releasable form, or shall describe the manner in which access to the record will be granted. The notice also shall inform the requester of any processing fee.

(2) A denial is a determination to withhold any requested record in whole or in part or a determination that the requested record does not exist or cannot be located. If the request is denied, then the denial notice shall state:

(i) The name, signature, and title or position of the person responsible for the denial;

(ii) The reasons for the denial; and

(iii) The procedure for appeal of the denial under § 404.17 and a brief description of the requirements of that section.

(c) *Form of record disclosure.* Ex-Im Bank shall grant access to the requested records either by providing the requester with a copy of the record or, at the requester's option, by making the record available for inspection at a reasonable time and place. If Ex-Im Bank makes the record available for inspection, such inspection shall not unreasonably disrupt Ex-Im Bank operations. In addition, the requester must provide a form of official photographic identification—such as a passport, driver's license or identification badge—and any other form of identification bearing his or her name and address prior to inspection of the requested records. Records may be inspected by the requester in the presence of another individual, provided that the requester signs a form stating that Ex-Im Bank is authorized to disclose the record in the presence of both individuals.

§ 404.16 Schedule of fees.

(a) *Search and review.* Ex-Im Bank shall not charge for search and review.

(b) *Duplication.* Ex-Im Bank shall charge $.10 per page for paper copy duplication. Ex-Im Bank shall charge the actual or estimated cost of copies prepared by computer, such as tape or printouts, or for other methods of reproduction or duplication.

(c) *Minimum fee.* Ex-Im Bank shall waive final fees of $5.00 or less.

(d) *Fee waivers.* Ex-Im Bank may waive fees whenever it is determined to be in the public interest. Fees of less than $50.00 shall be waived in connection with any request by an employee, former employee or applicant for employment, related to a grievance or complaint of discrimination against Ex-Im Bank.

(e) *Special services charges.* Complying with requests for special services such as those listed in this paragraph is entirely at the discretion of Ex-Im Bank. Ex-Im Bank shall recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* Ex-Im Bank shall charge $25.00 to certify the authenticity of any Ex-Im Bank record or any copy of such record.

(2) *Special shipping.* Ex-Im Bank may ship by special means (e.g., express mail) if the requester so desires, provided that the requester has paid or has expressly undertaken to pay all costs of such special services. Ex-Im Bank shall not charge for ordinary packaging and mailing.

§ 404.17 Appeal of denials of access.

(a) *Appeals to the Assistant General Counsel for Administration.* Whenever Ex-Im Bank denies a request for access or for waiver or reduction of fees, the requester may appeal the denial to the Assistant General Counsel for Administration within 30 working days of the date of Ex-Im Bank's issuance of notice of such action. Appeals must be made in writing and signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address in § 404.12(e). Both the envelope and the appeal letter should be clearly marked in capital letters: ''PRIVACY ACT APPEAL.'' Failure to properly mark or address the appeal may slow its processing. An appeal shall not be deemed to have been received by Ex-Im Bank until the Assistant General Counsel for Administration receives the appeal letter. The letter should include:

(1) A copy of the denied request or a description of the records requested;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied; and

(4) The Ex-Im Bank identification number assigned to the request.

(b) *Final determination.* The disposition of an access appeal shall be made in writing within twenty working days after the date of receipt of the appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days for good cause, provided that the requester is notified in writing. A decision affirming the denial of a request for access shall include a brief statement of the reasons for affirming the denial and shall advise the requester of the right to seek judicial review. If the initial determination is reversed, then the request shall be remanded to the Freedom of Information and Privacy Office to be processed in accordance with the decision on appeal.

§ 404.18 Requests for correction of records.

(a) *Form.* Requests for correction must be made in writing and signed by the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester. The request must identify the particular record in question, state the correction sought, and set forth the justification for the correction. The requester also must verify his or her identity in accordance with the procedures set forth at § 404.14 (d) and (e). Both the envelope and the request for correction itself should be clearly marked in capital letters: ''PRIVACY ACT CORRECTION REQUEST.''

(b) *Initial determination.* The Freedom of Information and Privacy Office shall respond to valid correction requests within ten working days of receipt of the request letter. If Ex-Im Bank grants the request for correction, then the Freedom of Information and Privacy Office shall advise the requester of his or her right to obtain a copy, in releasable form, of the corrected record. A denial notice shall state the reasons for the denial and shall advise the requester of the right to appeal. Ex-Im Bank shall not charge for processing requests for correction.

(c) *Appeal of denial of request for correction.* Whenever Ex-Im Bank denies a request for correction, the requester may appeal the denial to the Assistant General Counsel for Administration within thirty working days of Ex-Im Bank's issuance of notice of such action. Appeals must be made in writing and signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address set forth in § 404.12(e). Both the envelope and the appeal letter should be clearly marked in capital letters: ''PRIVACY ACT CORRECTION APPEAL.'' Failure to properly mark or address the appeal may slow its processing. An appeal shall not be deemed to have been received by Ex-Im Bank until the Assistant General Counsel for Administration receives the appeal letter. The letter must include:

(1) A copy of the denied request or a description of the correction sought;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied;

(4) The Ex-Im Bank identification number assigned to the request; and

(5) Any information said to justify the correction.

(d) *Final determination on correction appeal.* (1) The disposition of an appeal shall be made in writing within twenty working days after the date of receipt of an appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days for good cause, provided that the requester is notified in writing.

(2) A decision affirming the denial of a request for access shall advise the appellant of the:

(i) Reasons for affirming the denial;

(ii) Right to seek judicial review; and

(iii) Right to file a statement of disagreement, as provided in paragraph (e) of this section.

(3) If the initial determination is reversed, then the request shall be remanded to the Freedom of Information and Privacy Office to be processed in accordance with the decision on appeal.

(e) *Statement of disagreement.* Upon denial of a correction appeal, the appellant shall have the right to file a statement of disagreement with Ex-Im Bank, setting forth his or her reasons for disagreeing with the Agency's action. The statement should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and must be received within thirty working days of Ex-Im Bank's issuance of the denial notice. A statement of disagreement must not exceed one typed page per fact disputed. Statements exceeding this limit shall be returned to the requester for editing. Upon receipt of a statement of disagreement under this section, the Freedom of Information and Privacy Office shall have the statement included in the system of records in which the disputed record is maintained and shall have the disputed record marked so as to indicate that a Statement of Disagreement has been filed. Ex-Im Bank may also append to the disputed record a written statement regarding Ex-Im Bank's reasons for denying the request to correct the record.

(f) *Notices of correction or disagreement.* In any disclosure of a record for which Ex-Im Bank has received a statement of disagreement, Ex-Im Bank shall clearly note any portion of the record which is disputed and shall provide a copy of the statement of disagreement. Ex-Im Bank also may provide its own statement regarding the disputed record. In addition, whenever Ex-Im Bank corrects a record or receives a statement of disagreement, Ex-Im Bank shall advise any person or agency to which it previously disclosed such record of the correction or statement, provided that an accounting of such disclosure exists.

§ 404.19 Request for accounting of record disclosures.

(a) *Required information.* With respect to each system of records under Ex-Im Bank control, Ex-Im Bank shall maintain an accurate accounting of the date, nature, and purpose of each external disclosure of a record and the name and address of all persons, organizations, and agencies to which disclosure has been made. Ex-Im Bank shall retain this accounting for at least five years or the life of the record, whichever is longer.

(b) *Form.* An individual may obtain an accounting of all disclosures of a record, provided that such individual establishes his or her identity as the subject of such record in accordance with the procedures set forth at § 404.14 (d) and (e). A request for an accounting must be made in writing and signed by the requester. The request should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester. Both the envelope and the request itself should be clearly be marked in capital letters: ''PRIVACY ACT ACCOUNTING REQUEST.'' Failure to properly mark or address the request may slow its processing. The request shall not be deemed to have been received by Ex-Im Bank until the Freedom of Information and Privacy Office receives the request. The letter must clearly identify the particular record for which the accounting is requested.

(c) *Initial determination.* The Freedom of Information and Privacy Office shall notify the requester whether the request will be granted or denied within ten working days of receipt of a valid request for an accounting. Ex-Im Bank shall not charge for processing such a request.

(d) *Exceptions.* Ex-Im Bank shall not be required to provide an accounting to an individual when the accounting relates to:

(1) A disclosure made to an employee within the agency;

(2) A disclosure made under the FOIA; or

(3) A disclosure made to a law enforcement agency for an authorized law enforcement activity in response to a written request from such agency which specified the law enforcement activity for which the disclosure was sought.

§ 404.20 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Assistant General Counsel for Administration shall make reasonable efforts to provide notice of this to the individual. Notice shall be given within a reasonable time after Ex-Im Bank's receipt of the order, except that in a case in which the order is not a matter of public record, notice shall be given only after the order becomes public. Such notice shall be mailed to the individual's last known address and shall contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* If a record has been disclosed by Ex-Im Bank under compelling circumstances affecting the health or safety of any person, then, within ten working days, the Assistant General Counsel for Administration shall notify the subject individual of the disclosure at his or her last known address. The notice of such disclosure shall be in writing and shall state the:

(1) Nature of the information disclosed;

(2) Person, organization or agency to which it was disclosed;

(3) Date of disclosure; and

(4) Compelling circumstances justifying the disclosure.

§ 404.21 Submission of social security and passport numbers.

(a) *Policy.* Ex-Im Bank recognizes the importance of assessing, to the extent

reasonably possible, the risks associated with transactions supported by Ex-Im Bank. It is often difficult to assess risks related to individuals and non-publicly trade entities. Therefore, when an individual or a non-publicly traded entity applies for participation in an Ex-Im Bank program or is proposed as a guarantor for an Ex-Im Bank transaction, Ex-Im Bank may request social security and/or U.S. passport numbers from such individual or from the principals of such entity. Ex-Im Bank shall not require submission of this information, and unwillingness or inability to provide a social security or passport number shall not affect Ex-Im Bank's decision on an application for Ex-Im Bank assistance.

(b) *Use.* Ex-Im Bank shall use social security and passport numbers to assess the creditworthiness of Ex-Im Bank program participants and as a mechanism for enforcing agreements with Ex-Im Bank. Such information shall not be disclosed, except as warranted by law and regulation.

(c) *Notice.* Whenever Ex-Im Bank requests a social security or passport number, Ex-Im Bank shall place an appropriate Privacy Act notification on the form used to collect the information.

§ 404.22 Government contracts.

(a) *Approval by Assistant General Counsel for Administration.* Ex-Im Bank shall not contract for the operation of a system of records or for an activity which requires access to a system of records without the express, written approval of the Assistant General Counsel for Administration.

(b) *Contract clauses.* Any contract authorized under paragraph (a) of this section shall contain the standard contract clauses required by the Federal Acquisition Regulation (48 CFR 24.104) to ensure compliance with the requirements imposed by the Privacy Act. The division within Ex-Im Bank which is responsible for technical supervision of the contract shall be responsible for ensuring that the contractor complies with the Privacy Act contract requirements.

(c) *Contractor status.* Any contractor that operates an Ex-Im Bank system of records or engages in an activity which requires access to an Ex-Im Bank system of records shall be considered an Ex-Im Bank employee for purposes of this subpart. Ex-Im Bank shall supply any such contractor with a copy of the regulations in this subpart upon entering into a contract with Ex-Im Bank.

§§ 404.23–404.25 [Reserved]

§ 404.26 Employee standards of conduct.

(a) *Ex-Im Bank responsibilities.* Ex-Im Bank shall inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Ex-Im Bank also shall notify its employees that they have a duty to:

(1) Protect the security of records;

(2) Ensure the accuracy, relevance, timeliness, and completeness of records;

(3) Avoid the unauthorized disclosure, either verbal or written, of records; and

(4) Ensure that Ex-Im Bank maintains no system of records without public notice.

(b) *Employee responsibilities.* Except as otherwise permitted by the Privacy Act, Ex-Im Bank employees shall:

(1) Not collect information of a personal nature from individuals unless an employee is authorized to collect such information to perform a function or discharge a responsibility on behalf of Ex-Im Bank;

(2) Collect from individuals only that information which is necessary to the performance of the functions or to the discharge of official responsibilities;

(3) Collect information about an individual directly from that individual, whenever practicable;

(4) Inform each individual from whom information protected by the Privacy Act is collected of:

(i) The legal authority that authorizes Ex-Im Bank to collect such information and whether disclosure is mandatory or voluntary;

(ii) The principal purposes for which Ex-Im Bank intends to use the information;

(iii) The routine uses Ex-Im Bank may make of the information; and

(iv) The practical and legal effects upon the individual of not furnishing the information;

(5) Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as to ensure fairness to the individual in the determination;

(6) Make reasonable efforts, prior to disseminating any record about an individual, to ensure that such records are accurate, relevant, timely, and complete;

(7) Maintain no record concerning an individual's religious or political beliefs or activities, or his membership in associations or organizations, unless:

(i) The individual has volunteered such information for his own benefit;

(ii) A statute expressly authorizes Ex-Im Bank to collect, maintain, use or disseminate the information; or

(iii) The individual's beliefs, activities or membership are pertinent to and within the scope of an authorized law enforcement or correctional activity;

(8) Notify the Assistant General Counsel for Administration of the existence or development of any system of records that has not been disclosed to the public;

(9) When required by the Act, maintain an accounting in the prescribed form of all disclosures of records by Ex-Im Bank to agencies or individuals;

(10) Not disclose any record to anyone for any use, unless such disclosure is permitted by the Act;

(11) Maintain and use records with care to prevent the inadvertent disclosure of records; and

(12) Notify the Assistant General Counsel for Administration of any record that contains information that the Act or the foregoing provisions of this paragraph do not permit Ex-Im Bank to maintain.

(c) *Review of systems of records.* Not less than once each year, the Ex-Im Bank Chief Information Officer shall review the systems of records maintained by Ex-Im Bank to ensure that Ex-Im Bank is in compliance with the provisions of the Privacy Act regarding publication of systems of records.

§ 404.27 Other rights and services.

Nothing in this subpart shall be construed to entitle any person to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

PART 405—[REMOVED AND RESERVED]

2. 12 CFR part 405 is removed and reserved.

Dated: November 24, 1997.

Kenneth W. Hansen,

General Counsel, Federal Register Liaison Officer.

[FR Doc. 97–31775 Filed 12–3–97; 8:45 am]

BILLING CODE 6690–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Mergers or Conversions of Federally-Insured Credit Unions to Non Credit Union Status: NCUA Approval

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would add a new provision to the disclosure statement in regulations relating to NCUA approval of mergers or conversions of federally-insured credit unions to non credit union status. Credit unions would be required to disclose in plain English on the cover page of the disclosure statement specific facts relating to the proposed transaction's impact on the members.

DATES: Comments must be received by February 2, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6553.

SUPPLEMENTARY INFORMATION:

Background

On September 16, 1994, the NCUA Board issued an interim final rule, part 708a, and request for comments. 59 FR 48790 (September 23, 1994). The rule established that the NCUA Board must approve any merger or conversion of a federally insured credit union to a non credit union institution. On March 1, 1995, the NCUA Board issued a final rule setting forth the procedures and disclosure requirements for these transactions. 60 FR 12659 (March 8, 1995). One of the issues addressed in the final rule was the requirement that a uniform member notice be sent to the members as part of the disclosure. Nine of the ten commenters supported a uniform notice. The reasons given were that a uniform notice would provide clear and consistent guidelines for merging credit unions, ensure that important information is not withheld from the members and require less individual review. The NCUA Board agreed with these goals, but believed that they could be accomplished more effectively through a listing of the information that must be included in the notice to members, rather than a form that may become outdated or not apply to all transactions. The final rule did not require a uniform notice.

The NCUA Board has had an opportunity to review Disclosure Statements under this rule and now, agrees with the commenters that certain key information should be routinely provided to the members in plain English. Although most of the information is currently being provided, it is buried in a multi-page Disclosure Statement, often in excess of fifteen pages. Further, it is stated in a way that is difficult to understand.

Proposal

To ensure that the members understand the proposed transaction's impact, the Board proposes requiring credit unions to provide in plain English on the cover page of the Disclosure the following information: (1) The institution will no longer be democratically controlled with each member having one equal vote. The larger depositors will have more votes than the smaller depositors; (2) This action would enable the credit union to further change its organizational structure in the future. For example, if the institution were to convert to a stock institution, the members will lose their equity ownership interest. Any future decision to convert to a stock institution would be made by a vote of the members. The weight a member's vote carries will be based on the amount of the member's deposit; and (3) The board of directors may receive financial benefits not available to other members. For example, after waiting the two years required by NCUA's regulation, Board members could be compensated and they could obtain stock under terms not available to other members.

In the event these statements do not apply to a particular transaction, they may be modified as necessary.

The NCUA Board is interested in receiving comments on the proposed uniform disclosure requirements.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the proposed rule if adopted will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that it is highly unlikely that small credit unions would be engaged in a merger or conversion to a noncredit union institution. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendments will apply to all federally insured credit unions. The proposed amendments are not designed or intended to interfere with the state regulation of state-chartered institutions. However, existing statutory requirements mandate the Board approve transactions of this nature for all federally insured credit unions. Recognizing the interests of states and state regulators in supervising state chartered credit unions, the rule governing transactions of this nature includes a provision that allows federally insured state chartered credit unions, on a case-by-case basis, to obtain a waiver from NCUA's rule and follow state procedures if those procedures are determined to adequately address the concerns of NCUA's rule. With this provision in the rule, the NCUA Board has determined that the proposed amendments are not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The proposed amendment requires the credit union to provide to its members information that is provided by NCUA in the proposal. The Paperwork Reduction Act does not apply to disclosures that are directives for a person to disclose information completely supplied by the agency. 5 CFR 1320.3(c)(2).

List of Subjects in 12 CFR Part 708a

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 708a as follows:

PART 708a—MERGERS OR CONVERSIONS OF FEDERALLY-INSURED CREDIT UNIONS TO NON CREDIT UNION STATUS: NCUA APPROVAL

1. The authority citation for part 708a is revised to read as follows:

Authority: 12 U.S.C. 1766, 1785.

2. Amend Appendix A to part 708a to revise paragraph (2)(m) to read as follows:

Appendix A to Part 708a—Notice to Members of Special Meeting, Disclosure and Ballot

* * * * *

(2) * * *

(m) The cover of the Disclosure Statement must contain the following statement in bold, appropriately modified to the extent that this statement does not accurately describe the transaction:

PLEASE READ THIS DISCLOSURE DOCUMENT. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR CREDIT UNION.

If the credit union converts to a savings bank, the institution will no longer be democratically controlled with each member having one equal vote. As explained in this Disclosure, the larger depositors will have more votes than the smaller depositors.

This action would enable the credit union to further change its organizational structure in the future. For example, if the institution were to convert to a stock institution, you would lose your equity ownership interest. Any future decision to convert to a stock institution would be made by a vote of the members, however, the weight your vote carries will be based on the amount of your deposit in the institution.

If the credit union converts to a savings bank, your board of directors may receive financial benefits not available to other members. For example, Board members could be compensated and they could obtain stock on terms not available to other members, after waiting the two years required by credit union regulation.

* * * * *

[FR Doc. 97–31501 Filed 12–3–97; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708b

Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

AGENCY: National Credit Union Administration (''NCUA'').

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA Board propose to amend the disclosure forms in NCUA's regulations relating to mergers and voluntary termination or conversion of insured status in mergers of federally-insured credit unions. The amendments inform the members that, if their credit union converts to nonfederal insurance, the private insurance fund insuring their accounts is not backed by the full faith and credit of the United States government. It also informs the members that, if their credit union terminates insurance, their shares, excluding those covered for one year, are no longer insured by the federal government or any other entity.

DATES: Comments must be received on or before February 2, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Federal Deposit Insurance Act, 12 U.S.C. 1811 *et seq.*, requires credit unions that are not federally insured to advise their members on ''all periodic statements of account, on each signature card, and on each passbook, certificate or deposit, or similar instrument evidencing a deposit a notice that the institution is not federally insured, and that if the institution fails, the Federal government does not guarantee that depositors will get back their money.'' 12 U.S.C. 1831t(b)(1). Clearly, a member of a credit union being asked to vote on a proposal that would replace federal insurance with private insurance is entitled to a similar disclosure. Currently, NCUA's regulations do not require disclosure of this information.

Proposal

Sections 708(b).301 (a)(1) and (b)(1) contain the form notices that are sent to the members if a credit union is seeking to terminate federal insurance. The proposal would amend the notices by clarifying to the members that if the credit union fails, their shares are no longer insured by the federal government or any other entity.

Sections 708b.302(a)(1), (a)(2), (b)(1) and (b)(2) contain the form notices and ballots that are sent to the members if a credit union is seeking to convert from federal to nonfederal insurance. The proposal would add a sentence to the notice and ballot explaining that the insurance provided by the NCUA is backed by the full faith and credit of the United States government and that the private insurance the member will receive if the credit union converts is not backed by the United States government.

The Board believes this information must be disclosed in order for the member to make an informed vote on the proposed transaction. Disclosure of this information is consistent with the disclosure requirements Congress imposes on credit unions lacking federal insurance.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the proposed rule if adopted will not have a significant economic impact on a substantial number of small credit unions. The reasons for this determination are that the proposed rule requires the addition of two sentences to the disclosure form used by credit unions converting to nonfederal insurance. The addition of these two sentences will not increase the costs of the conversion and therefore will not create a financial burden. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendments will apply to all federally insured credit unions. The proposed amendments are not designed or intended to interfere with the state regulation of state-chartered institutions. However, the Board is modeling this proposal on federal legislation that specifically applies to state-chartered credit unions. The NCUA Board has determined that the proposed amendments are not likely to have any direct effect on states, the relationship between the states, or the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

The proposed amendment requires the credit union to provide to its members information that is provided by NCUA in the proposal. The Paperwork Reduction Act does not apply to disclosures that are directives for a person to disclose information completely supplied by the agency. 5 CFR 1320.3(c)(2).

List of Subjects in 12 CFR Part 708b

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 24, 1997.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 708b as follows:

PART 708b—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

1. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1766, 1785, 1786, 1789.

2. In § 708b.301, paragraph (a)(1) is amended by revising the second paragraph of the *Notice of Proposal to Terminate Federal Insurance* and paragraph (b)(1) is amended by revising the third paragraph of the *Notice of Proposal to Merge and Terminate Federal Insurance* to read as follows:

§ 708b.301 Termination of insurance.

(a) * * *

(1) *Notice of Proposal to Terminate Federal Insurance*

* * * * *

If approved, any deposits made by you after the date of termination, either new deposits or additions to existing accounts, will not be insured by the NCUA or any other entity. In the event the credit union fails, these deposits are not insured by the federal government. No provision has been made for alternative insurance, therefore, these deposits will be uninsured.

* * * * *

(b) * * *

(1) *Notice of Proposal to Merge and Terminate Federal Insurance*

* * * * *

Any deposits made by you after the effective date of the merger, either new deposits or additions to existing accounts, will not be insured by the NCUA or any other entity. In the event the credit union fails, these deposits are not insured by the federal government. No provision has been made for alternative insurance, therefore, these deposits will be uninsured. Accounts in the *merging* Credit Union on the date of the merger, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the date of the merger, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

* * * * *

3. In § 708b.302, paragraph (a)(1) is amended by adding two sentences at the end of the second paragraph of the *Notice of Proposal to Convert to Nonfederally-Insured Status,* paragraph (a)(2) is amended by adding a sentence at the end of the second paragraph of the ballot, paragraph (b)(1) is amended by adding two sentences at the end of the second paragraph of the *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status* and paragraph (b)(2) is amended by adding a sentence at the end of the second paragraph of the ballot to read as follows:

§ 708b.302 Conversion of insurance.

(a) * * *

(1) *Notice of Proposal to Convert to Nonfederally-Insured Status*

* * * * *

* * * The insurance provided by the National Credit Union Administration, an independent agency of the United States, is backed by the full faith and credit of the United States government. The private insurance you will receive from _____ is not guaranteed by the federal or any state government.

(2) * * * The private insurance provided by _____ is not backed by the full faith and credit of the United States government as is the federal insurance provided by the National Credit Union Administration.

* * * * *

(b) * * *

(1) *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status*

* * * * *

* * * The insurance provided by the National Credit Union Administration, an independent agency of the United States, is backed by the full faith and credit of the United States government. The private insurance you will receive from _____ is not guaranteed by the federal or any state government.

(2) * * * The private insurance provided by _____ is not backed by the full faith and credit of the United States government as is the federal insurance provided by the National Credit Union Administration.

* * * * *

[FR Doc. 97–31502 Filed 12–3–97; 8:45 am]

BILLING CODE 7535–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 211

RIN 3220–AB23

Creditable Railroad Compensation

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board hereby proposes to amend its regulations to limit the crediting of pay for time lost to periods prior to the judgment or agreement establishing that payment or in the case of pay for time lost not attributable to a judgment or settlement, prior to the date of payment.

DATES: Comments must be received on or before February 2, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Senior Attorney, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611, telephone 312–751–4513, TTD 312–751–4701.

SUPPLEMENTARY INFORMATION: Payments made for periods during which an employee is absent from the active service of an employer are considered to be ''pay for time lost'' and creditable compensation under the Railroad Retirement Act. Pay for time lost includes pay received due to an injury or due to loss of earnings attributable to the employee being placed in a position paying less money. Employers are required to allocate pay for time lost to the months in which the time was actually lost. Pursuant to section 211.3 of the current regulations, the Board will accept an allocation of pay for time lost for periods after the judgment or settlement, and after the payment is made. The practice has been costly to the railroad retirement system in that taxes under the Railroad Retirement Tax Act are imposed on railroad compensation at the time of payment up to the maximum taxable amount for the year in which the payment is made. Accordingly, if a personal injury suit is settled in 1997 and the railroad agrees to pay the employee $300,000 to be allocated as pay for time lost over the period 1997 through 2002 with $50,000 being designated to each year as pay for time lost, the employee would receive six years of retirement credit, but taxes would cover only one year of those additional credits.

There is no requirement in the statute that pay for time lost be creditable prospectively and, in the view of the majority of the Board, to allow prospective crediting of pay for time lost cannot be justified in view of the additional, potentially large costs to the system.

Section 1(h)(2) of the Railroad Retirement Act requires that pay for time lost must be paid with respect to an identifiable period of absence. This language, in the view of a majority of the Board, suggests that pay for time lost should be credited only to a known period of absence in the past. It is impossible to predict whether or not an

employee will remain absent from work in the future as a result of injury; accordingly, there is no truly identifiable period for prospective crediting of pay for time lost. Moreover, to allow parties to private litigation to pass on a portion of the costs of litigation to a Federal benefit program simply makes no sense.

Based on its review of the statutory language and the legislative history, a majority of the Board, Labor Member dissenting, proposes to amend its regulations to prohibit crediting of pay for time lost beyond the date of the judgment or settlement or, in the absence of a judgment or settlement, beyond the date of payment. The proposed regulation excepts from these restrictions the crediting of deemed service months pursuant to section 3(i)(4) of the Railroad Retirement Act. That section provides that an employee who has performed service for compensation in less than twelve months of a calendar year, but has received compensation in excess of the amount that may be credited to the months of actual service, may have the excess credited to an additional month or months in that same year.

The Labor Member has made a proposal that he believes resolves the financial problem with the existing procedure by requiring that taxes be paid in each of the years for which pay for time lost credit is sought. While the majority appreciates the Labor Member's efforts in attempting to resolve the problems with the current policy, the majority does not believe that the payment of taxes will fully fund the additional benefit payment and believes that the better approach would be to scrap what it believes to be a bad policy rather than tinker with it.

Employees who negotiate prospective pay for time lost credits do so because without the additional credits they would not meet the service requirement of 20 years for an occupational disability annuity. Accordingly, without the prospective pay for time lost credits, no benefits would be payable to these employees until they reach age 60 or become totally and permanently disabled. Railroad retirement taxes paid for several years of pay for time lost will not cover the additional costs to the system of the occupational disability annuities that otherwise would not have been paid. Moreover, under the regulations, a month of pay for time lost credit may be granted based on an allocation of compensation to the month of at least 10 times the employee's daily wage rate. Accordingly, taxes would be payable on an allocation of as little as fifty percent of the employee's normal monthly compensation, but the employee would receive a full month credit for retirement purposes. The Labor Member's proposal does nothing to address this shortfall. The majority simply does not believe that it is appropriate to use trust fund moneys to subsidize the costs of private litigation.

Finally, the majority views the Labor Member's proposal as, in effect, allowing employees to purchase retirement credit. In the view of the majority, this is simply bad policy.

Views of the Labor Member of the Board

Section 1(h) of the Railroad Retirement Act authorizes the crediting of pay for time lost as compensation insofar as the employee and his or her railroad employer agree to that crediting in connection with an on-the-job injury. That provision thereby encourages the settlement of disputes and permits the allocation of loss between parties, in whatever way those parties themselves see fit and so negotiate, see 211.3(b) of the Board regulation 20 CFR § 211.3(b).

The majority, by limiting the employer's ability to provide for future lost wages as the result of an on-the-job injury, as proposed in this rule, interferes with an employer's and employee's ability to settle Federal Employers' Liability Act (FELA) claims. This needless intrusion into FELA disputes by the Board will only increase litigation of disputes which could easily have been settled. It also prevents personal injury settlements from achieving the goal of making injured employees, as far as possible, whole.

The majority of the Board states that pay for time lost is being credited prospectively, after the date of settlement or judgment (or, in the absence of a settlement or judgment, after the date of payment), without taxes under the Railroad Retirement Tax Act being paid for those payments. This can be true where pay for time lost in the future is compensated for by a lump sum payment at the time of settlement. The Labor Member notes the majority says the current procedures are costly, but never states what that cost is, as requested by OMB. Nevertheless, the Labor Member has a proposal, explained below, that directly addresses this concern.

The majority also suggests that the statute, by providing that pay for time lost may only be credited to an identifiable period of lost time, precludes prospective crediting of pay for time lost. This view reads more into the statute than is actually there. The Labor Member agrees with the majority that pay for time lost may be credited only to an identifiable period of lost time. That, he notes, does not mean that the statute precludes, in any way, the crediting of pay for time lost to a period of lost time after the date of settlement where agreed to by the parties. This was recognized by the Board as early as 1947 in an opinion by the Board's General Counsel, L–47–146. Indeed, the cases where pay for time lost is allocated into the future are generally those where the employee is so badly injured that he or she will never again be able to work in the railroad industry. The only way the employee may be made whole in such cases is by paying the employee for future lost wages and providing the retirement credits that would accrue from such future lost wages. As noted above, the Labor Member believes that the past policy of allowing the crediting of pay for time lost into the future has facilitated out-of-court settlement of disputes and has served the interests not only of employees, but also of employers. Although it is the opinion of the Labor Member that the past policy is good policy, he believes that the problem with prospective crediting of pay for time lost noted by the majority can be addressed by simply prohibiting pay for time lost in the future to be paid in the form of a lump sum. The Labor Member proposes that prospective crediting of pay for time lost be limited to periodic payments made in the year or years for which the credit is sought and where the employment taxes are paid with respect to those payments. Such payments are in the nature of wage continuation payments or dismissal payments which are clearly compensation under the Act, see 20 CFR 211.9.

For example, John Doe and ABC Railroad enter into a settlement agreement in July 1996 pursuant to which John Doe retains an employment relationship with ABC Railroad through 1998 and ABC Railroad agrees to pay John Doe pay for time lost in the amount of $150,000 for the years 1996 ($50,000), 1997 ($50,000), and 1998 ($50,000). ABC issues a check to John Doe in 1996 for $50,000, minus the employee tax under the Railroad Retirement Tax Act, and pays the employer tax and the withheld employee tax under the Railroad Retirement Tax Act. ABC Railroad makes the same payments to John Doe on January 1, 1997 and January 1, 1998. John Doe would, under the Labor Member's proposal, receive credit for pay for time lost in 1996, 1997, and 1998. If ABC Railroad were to pay the $150,000 in a lump sum in 1996, John Doe would receive credit only in 1996. The payments in the

above example would be reported on the Employer's Annual Report of Compensation required under 20 CFR 209.6 along with other wages paid to other employees that year. Pay for time lost payments would be indistinguishable from regular wages. The Labor Member believes that his proposal would address the concern of the majority by fully funding the prospective pay for time lost credits while continuing to allow railroad employees and railroad employers to use pay for time lost allocations in a positive way to resolve disputes.

With the modification he suggested, the Labor Member feels there is no further justification in the majority's position on this regulation. The majority has indicated that it is better to scrap a ''bad'' regulation rather than ''tinker'' with it. The Labor Member believes that making employees who are injured in service to the rail industry whole is not tinkering. It is a moral obligation.

The majority also believes that the Labor Member's proposal amounts to allowing employees to purchase retirement credits. This is true. It would be allowed, however, for only those employees who have demonstrated through long years of service a career commitment to the rail industry, and then, only when they have been severely injured or otherwise incapacitated while performing rail service. Finally, it would be further limited to only those in the foregoing category who receive compensation from a settlement based on a conviction of both the railroad and the employee that the railroad would probably be found negligent in causing the employee's injury.

The majority points out that the additional tax paid for several years of pay for time lost will not finance the additional benefits which would be paid under the Labor Member's proposal. The Labor Member believes that this is true but irrelevant. Completely aside from the obligation to make injured employees whole, whatever the cost, is the well established, clearly understood, and universally accepted feature of social insurance programs that the contributions paid by a disabled participant will rarely ever finance the actual benefits paid to such individual. Covering the cost of such eventualities from contributions of the remaining participants, including the negligent railroads, is the purpose of an insurance program. Disability benefits would virtually never be paid by any program under the condition laid down in this regulation by the Board majority.

The majority notes that ten times the employee's daily rate of pay is too low an amount for a month of compensation. The Labor Member points out that an employee who is not injured need perform only one hour of service to get a month of railroad retirement credit. However, whenever low compensation months are used to obtain additional service, the compensation average on which the annuity is based is depressed, producing a lower benefit. In any event, the ten times daily pay rate rule has been set by regulation by a previous Board after full and careful review of the issue. The issue ought not be reopened now.

Finally, the Labor Member notes that the majority references ''employees who *negotiate*'' pay for time lost. This terminology clearly acknowledges that, under current procedures, prospective credit can be given only when the railroads have agreed to do so. Thus, the railroads already control the use of this procedure through their right to simply refuse to go along with prospective crediting. Therefore, there is no need for the regulation change herein proposed by the Board majority.

The Office of Management and Budget has determined that this is a significant regulatory action under Executive Order 12866. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 211

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is amended as follows:

PART 211—[AMENDED]

1. The authority citation for part 211 continues to read as follows:

Authority: 45 U.S.C. 231(f).

2. Section 211.3 is amended by adding paragraph (c):

§ 211.3 Compensation paid for time lost.

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, pay for time lost may not be credited to any period after the date of the judgment or settlement agreement providing pay for time lost. If the payment is not the result of a judgment or settlement, pay for time lost may not, except as provided in paragraph (c)(2) of this section, be credited to any period after the date of payment.

(2) Pay for time lost may be creditable as deemed service under section 3(i)(4) of the Railroad Retirement Act in the year in which either the judgment or settlement occurred or in the case of pay for time lost not attributable to a judgment or settlement, in the year in which the payment occurred.

Dated: November 21, 1997.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–31725 Filed 12–3–97; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105160–97]

RIN 1545–AV17

Qualified Nonrecourse Financing Under Section 465(b)(6); Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 465(b)(6) regarding qualified nonrecourse financing.

DATES: The public hearing originally scheduled for Wednesday, December 10, 1997, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 465 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Wednesday, August 13, 1997 (62 FR 43295), announced that the public hearing on proposed regulations under section 465 of the Internal Revenue Code would be held on Wednesday, December 10, 1997, beginning at 10:00 a.m., in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C.

The public hearing scheduled for Wednesday, December 10, 1997 is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–31806 Filed 12–3–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN 0720–AA43

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Waiver of Collection of Payments Due From Certain Persons Unaware of Loss of CHAMPUS Eligibility

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule authorizes the waiver of collection of payments due from individuals who lost their CHAMPUS eligibility when they became eligible for Medicare Part A, due to disability or end stage renal disease.

DATES: Written comments will be accepted until February 2, 1998.

ADDRESSES: Forward comments to the Office of the Assistant Secretary of Defense (Health Affairs), 1B657 Pentagon, Washington, DC 20301–1200.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Speight, Office of Health Services Financing Policy, (703) 697–8975.

SUPPLEMENTARY INFORMATION: Formerly, under Title 10 United States Code, Section 1086(d), a beneficiary lost eligibility for CHAMPUS when he or she became eligible for Medicare Part A, including when eligibility was due to disability or end stage renal disease. Payments made after the beneficiary attained eligibility for Medicare Part A were erroneous payments and subject to collection under the Federal Claims Collection Act. In 1991, Congress amended 10 U.S.C. 1086(d) to provide that those persons eligible for Medicare by reason of disability or end stage renal disease who are enrolled in the supplementary medical insurance program under Medicare Part B retain eligibility for CHAMPUS, secondary to Medicare coverage. Section 743 of the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, provides authority, effective February 10, 1996, to waive the collection of erroneous civilian health care benefits from a person under age 65 who lost eligibility for civilian care due to eligibility for Medicare as a result of disability or end stage renal disease. The period of this waiver authority begins January 1, 1967, and ends on the later of July 1, 1996, or the termination date of any special enrollment Medicare period established by law for such person.

Since most payments made under CHAMPUS are paid directly to participating providers of care, and not to the beneficiary, the proposed rule also provides for the waiver of collection of such payments made to participating providers. These providers are paid based on a contractual agreement of benefits by the beneficiaries. If the claim for these benefits cannot be paid due to ineligibility of the beneficiary, the beneficiary indebtedness to the provider would remain. Thus, the authority to relieve disabled CHAMPUS beneficiaries from the indebtedness arising from these erroneous payments does not depend upon who actually received the payments.

Regulatory Procedures

Executive Order 12866 requires that a regulatory impact analysis be performed on any significant regulatory action, defined as one which would have an annual effect on the economy of $100 million or more, or have other significant effects.

The Regulatory Flexibility Act requires that each federal agency prepare a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. This proposed rule is not significant regulatory action under E.O. 12886, nor would it have a significant impact on small entities. The changes set forth in the proposed rule are minor revisions to the existing regulation. In addition, this proposed rule does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). This is a proposed rule. All public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.11 is amended as follows:

a. By revising paragraphs (b)(1) and (g) heading.

b. By redesignating paragraphs (g)(3), (g)(4), (g)(5), (g)(6), (g)(7), (g)(8) and (g)(9) as paragraphs (g)(4), (g)(5), (g)(6), (g)(7), (g)(8), (g)(9) and (g)(10), respectively.

c. By adding paragraph (g)(3) and revising newly redesignated paragraph (g)(10).

The additions and revisions read as follows:

§ 199.11 Overpayments recovery.

* * * * *

(b) * * *

(1) *Federal statutory authority.* The Federal Claims Collection Act (31 U.S.C. 3701 et seq.) provides the basic authority under which claims may be asserted pursuant to this section. It is implemented by joint regulations issued by the Department of Justice and the General Accounting Office, 4 CFR parts 101 through 105. Thereunder, the heads of federal agencies or their designees are required to attempt collection of all claims of the United States for money or property arising out of the activities of their respective agencies. These officials may, with respect to claims that do not exceed $20,000, exclusive of interest, and in conformity with the standards promulgated in the joint regulations, compromise, suspend, or terminate collection action on such claims. Section 743 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106, 110 Stat. 186) authorizes the waiver (see paragraph (g)(3) of this section) of collection of overpayments otherwise due from a person after the termination of the person's CHAMPUS eligibility, because the person became eligible for Medicare Part A by reason of disability or end-stage renal disease.

* * * * *

(g) *Compromise, waiver, suspension or termination of collection actions arisings under the Federal Claims Collection Act.*

* * * * *

(3) *Waiver of collection of erroneous payments due from certain persons unaware of loss of CHAMPUS eligibility.* (i) The Director, OCHAMPUS may waive collection of payments otherwise due from certain persons as a result of health benefits received under this Part after the termination of the person's eligibility for such benefits. Waiver may be granted if collection of such payments would be against equity and good conscience and not in the best interest of the United States. These criteria are met by a finding that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the person who received the erroneous payment or any other person having an interest in obtaining such waiver.

(ii) *Persons eligible for waiver.* The following persons are eligible for waiver:

(A) A person who:

(*1*) Is entitled to Medicare Part A by reason of disability or end stage renal disease;

(*2*) In the absence of such entitlement, would have been eligible for CHAMPUS under section 1086 of title 10, United States Code; and

(*3*) At the time of the receipt of such benefits, was under age 65.

(B) Any participating provider of care who received direct payment for care provided to a person described in paragraph (g)(3)(ii)(A) of this section pursuant to an assignment of benefits from such person.

(iii) The authority to waive collection of payments under this section shall apply with regard to health benefits provided during the period beginning January 1, 1967, and ending on the later of: the termination date of any special enrollment period for Medicare Part B provided specifically for such persons; or July 1, 1996.

* * * * *

(10) *Effect of compromise, waiver, suspension or termination of collection action.* Pursuant to the Internal Revenue Code, 26 U.S.C. 6041, compromises and terminations of undisputed debts not discharged in a Title 11 bankruptcy case and totaling $600 or more for the year will be reported to the Internal Revenue Service in the manner prescribed for inclusion in the debtor's gross income for that year. Any action taken under this paragraph (g) regarding the compromise of a federal claim, or waiver or suspension or termination of collection action on a federal claim is not an initial determination for purposes of the appeal procedures of § 199.10.

* * * * * * *

Dated: November 26, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–31610 Filed 12–3–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

36 CFR Part 327

Shoreline Use Permits, Flotation

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Supplementary proposed rule.

SUMMARY: The Corps published a proposed rule in the April 15, 1997, issue of the **Federal Register**, concerning flotation materials to be used on all new docks and boat mooring buoys. Comments received during the 45 day comment period prompted the Corps to conduct further study and give additional consideration to flotation requirements. As a result, the Corps is withdrawing this amendment and proposing a new amendment.

An amendment to the Guidelines for Granting Shoreline Use Permits was also part of the proposed rule published on April 15, 1997. This language reduced onerous requirements on individuals who have requested waivers due to obvious limiting health conditions by giving Operations Project Managers flexibility to take special circumstances of the applicant into consideration when issuing a shoreline management permit. No negative comments were received during the comment period and this amendment will be issued as a final rule at a later date, probably in conjunction with the flotation amendment, once the flotation issue is resolved.

DATES: Comments must be submitted on or before January 20, 1998.

ADDRESSES: HQUSACE, CECW–ON, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis, (202) 761–0247.

SUPPLEMENTARY INFORMATION: The Corps published a final rule providing policy and guidance on the management of shorelines of Corps of Engineers managed Civil Works projects in the **Federal Register** on July 27, 1990, (55 FR 30690–30702), last amended in the **Federal Register** on July 1, 1992 (57 FR 29219–29220).

Two amendments to the regulation were published as a proposed rule in the **Federal Register** on April 15, 1997 (62 FR 18307–18308). An amendment to Paragraph 2.c(9) of Appendix A, Section 327.30, Guidelines for Granting Shoreline Use Permits, gave operational project managers flexibility to take special circumstances of the applicant into consideration when issuing a permit. This language reflected the Corps desire to accommodate basic access for those individuals who have requested waivers due to either obvious limiting health conditions or those documented by a doctor's certification. No negative comments were received regarding this amendment during the comment period. Therefore, this portion of the April 15, 1997 proposed rule will be promulgated as a final rule at a later date.

Paragraph 14, Appendix C, of Section 327.30, also published in the April 15, 1997, proposed rule, reflected the Corps amended flotation requirements for all new docks and boat mooring facilities. The Corps received 28 letters concerning flotation during the comment period of this proposed rulemaking. The comments prompted the Corps to conduct further study and give additional consideration to flotation requirements. Accordingly, the flotation portion of the proposed rule published on April 15, 1997, is withdrawn and a new amendment is proposed.

Procedural Requirements

Executive Order (E.O.) 12866

The Secretary of the Army has determined that this proposed revision is not a ''major'' rule within the meaning of Executive Order (E.O.) 12866. If approved, this revision will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-based enterprise in domestic or export markets.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Collection of Information

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

Executive Order 12612

The Corps has analyzed this proposed rule under principles and criteria in E.O. 12612 and has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The Corps has determined that this proposed rule does not have ''significant'' taking implications. The proposed rule does not pertain to taking of private property interests, nor does it impact private property.

NEPA Statement

The Corps has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human

environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Unfunded Mandates Act of 1995

This proposed rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

List of Subjects in 36 CFR Part 327

Lakeshore management, Public lands.

For the reasons set forth in the preamble, we propose to withdraw the amendment to 36 CFR Part 327, Appendix C published at 62 FR 18307 (April 15, 1997) and to amend 36 CFR Part 327, as follows:

PART 327 —RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCE DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

1. The authority citation for 36 CFR Part 327 continues to read as follows:

Authority: 16 U.S.C. 460d and 460*l*–6a.

2. Appendix C to § 327.30 is amended by revising paragraph 14 to read as follows:

Appendix C to § 327.30—Shoreline Use Permit Conditions

* * * * *

14. Flotation for all docks and boat mooring buoys shall be of materials manufactured for marine use. Flotation will be 100% warranted for a minimum of 8 years to not sink, become waterlogged, crack, peel, fragment or be subject to loss of beads. Flotation materials will resist puncture and penetration and will not be subject to damage by animals. Flotation will be fire resistant. Any flotation which is within 40 feet of a line carrying fuel shall be 100% impervious to water and fuel. Reuse of plastic, metal or other previously used drums or containers for encasement or flotation purpose is prohibited. Existing flotation is authorized until it has severely deteriorated and is no longer serviceable, at which time it shall be replaced with approved flotation. For any floats installed after the effective date of this specification, repair or replacement is required when it no longer performs its designated function or fails to meet the specifications for which it was originally warranted.

* * * * *

Dated: November 21, 1997.

For the Commander.

Robert W. Burkhardt,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 97–31776 Filed 12–3–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board.

49 CFR Chapter X

[STB Ex Parte No. 574]

Safe Implementation of Board-Approved Transactions

AGENCY: Surface Transportation Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board seeks comments from all interested persons on the extent to which railroads should be required to provide detailed information setting forth the manner in which they intend to safely implement authority granted by the Board in proceedings subject to the Board's jurisdiction.

DATES: Notices of intent to participate are due by December 24, 1997. Shortly thereafter, a list of participants will be issued. Comments are due by January 19, 1998. Replies are due by February 12, 1998.

ADDRESSES: Send an original and 10 copies of notices of intent to participate and pleadings referring to STB Ex Parte No. 574: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

Once the list of participants has been issued by the Board, send one copy of each comment and each reply to each party on the list of participants.

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

SUPPLEMENTARY INFORMATION: The rail transportation policy (RTP) (49 U.S.C. 10101), which was adopted in the Staggers Rail Act of 1980 and amended in the ICC Termination Act of 1995, establishes the basic policy directives against which all of the statutory provisions we administer must be weighed. The RTP provides, in relevant part, that, ''[i]n regulating the railroad industry, it is the policy of the United States Government * * * to promote a safe and efficient rail transportation system'' * * * [by allowing rail carriers to] operate transportation facilities without detriment to the public health and safety * * *.'' The rail transportation policy applies to all transactions subject to Board jurisdiction.

Over the years, the Board and its predecessor, the Interstate Commerce Commission (ICC), have considered the issue of safety along with other relevant issues in individual cases. For example, the ICC and the Board, in consultation with the Federal Railroad Administration (FRA), which has primary responsibility over railroad safety enforcement, have routinely considered safety in their environmental review of all rail mergers, acquisitions, line constructions, and similar transactions. In 1993, the ICC denied an application because the agency believed that no conditions could sufficiently mitigate the unsafe conditions arising out of the proposed construction of the rail line in *Construction and Operation—Indiana and Ohio Ry. Co.*, 9 I.C.C.2d 783 (1993). In a similar vein, we routinely address safety issues, with the advice of the FRA, in the context of rail embargoes.[1]

Recently, in a pending railroad merger proceeding, we undertook to address safety issues in a more systematic way. Specifically, in response to a request in the ongoing Conrail Acquisition proceeding by the FRA, we required the applicant railroads in that case to prepare detailed plans addressing how they propose to integrate their operations to ensure continued safety if the merger is approved by the Board. *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 52 (STB served Nov. 3, 1997) (Conrail Acquisition). In our decision, we explained that the railroads' submissions would be made part of the environmental record in that proceeding and dealt with in the ongoing environmental review process in that case. We stated that the railroads' submissions, which are due to be filed December 3rd, will be incorporated in a separate section of the Draft Environmental Impact Statement (DEIS) that is to be issued by the end of the year. We requested the FRA to provide us with its analysis of the plans, and invited comments from all other interested persons, during the 45-day comment period that will be provided on the DEIS. After review of these analyses and comments, the Board's environmental staff will address safety implementation issues in the Final

[1] In the embargo context, for example, a shipper might dispute a railroad's contention that it is temporarily unable to provide service because of unsafe operating conditions. The Board, in a recent decision, declared that, in such situations, it would secure an inspection from an FRA-certified safety inspector before directing service over a line embargoed for safety reasons. *Service Obligations Over Excepted Track*, STB Ex Parte No. 564 (STB served Oct. 22, 1997).

Environmental Impact Statement for the proposed Conrail Acquisition. We will then consider the full environmental record, including the information concerning Applicants' safety implementation plans, in arriving at our decision in the Conrail Acquisition proceeding.

The approach outlined above will assure our ability to fully address safety implementation issues in the proposed Conrail Acquisition proceeding. Having developed a vehicle by which to evaluate the impact on rail safety of one transaction, we believe it is appropriate to consider the advisability of promulgating a rule to extend this process to other rail transactions subject to the Board's jurisdiction. Accordingly, we seek public comment on the question of how the Board should proceed in this regard in exercising its jurisdiction over such transactions.

We are aware that the FRA has suggested that rules of general applicability might be appropriate for future mergers. In our view, the process adopted in STB Finance Docket No. 33388, which provides for full utilization of the expertise of both the Board and the FRA, establishes a mechanism for handling future merger cases. It might also have wider applicability to other types of transactions subject to the Board's jurisdiction; alternatively, different procedures for implementing the Board's responsibilities under the RTP to consider matters bearing on the safe implementation of transactions might be preferable outside the merger area. The administrative process permits the Board to proceed either by rule or on a case-by-case basis, and to address some kinds of transactions by rule and some by reliance on the development of precedent.

Accordingly, because the questions at issue here are significant and of broad interest, we are initiating *sua sponte* this proceeding to address the extent to which railroads should be required to provide detailed information setting forth the manner in which they intend to safely implement authority granted by the Board in proceedings subject to the Board's jurisdiction. We specifically seek the views of the FRA and of any other interested persons on these issues. We seek public comments on whether we should proceed broadly or on a case-by-case basis, and on specific standards and procedures that the Board could adopt by rule to assure the safe implementation of rail transactions subject to our jurisdiction. Parties filing comments should indicate whether their specific recommendations would apply to all transactions or only to certain types and, if the latter, which ones.

Depending on the nature of the submissions presented, we will determine at a future date whether to propose formal rules, issue a policy statement, or proceed on a case-by-case basis, as we have done in the Conrail Acquisition proceeding.

Decided: November 26, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31795 Filed 12–3–97; 8:45 am]

BILLING CODE 4915–00–P

Notices

Federal Register

Vol. 62, No. 233

Thursday, December 4, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists; Notice of Meeting

AGENCY: Forest Service, USDA.

SUMMARY: The Forest Service announces a meeting of the Committee of Scientists on December 19, 1997, subject to appointment of the Committee members by the Secretary of Agriculture. The Committee of Scientists is composed of 12 members and a Committee chair. The Committee of Scientists has been chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements to the Forest Service's land management planning process (62 FR 43691, August 15, 1997).

The purpose of the meeting is to discuss the organization of the Committee and to review the tasks and responsibilities detailed in the charter. The meeting is open to public attendance. Persons in attendance who wish to bring comments to the attention of the Committee may file written statements with the Committee before or after the meeting.

DATES: The meeting will be held December 19, 1997. The meeting will begin at 9:00 a.m. and end at 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn O'Hare International, 5440 North River Road, Rosemont, Illinois.

FOR FURTHER INFORMATION CONTACT:

Jonathan Stephens, Ecosystem Management Coordination Staff, Forest Service, telephone: (202) 205–0948.

Dated: December 1, 1997.

Ronald E. Stewart,

Acting Chief.

[FR Doc. 97–31857 Filed 12–2–97; 10:27 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Additional Releases, and Corrections

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on November 17, 1997, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Kevin G. Tiernan, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On November 17, 1997, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of postponements sustained immediately follows the record identification number, followed, where appropriate, by the date the document is scheduled to be released or re-reviewed.

FBI Documents: Postponed in Part

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Notice of Additional Releases

After consultation with appropriate Federal agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full:

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124–10296–10002; 124–10300–10094

After consultation with appropriate Federal agencies, the Review Board announces that the following Central Intelligence Agency records are now being opened in full: 104–10055–10130; 104–10059–10384; 104–10061–10092; 104–10062–10132; 104–10062–10292; 104–10086–10035; 104–10086–10042; 104–10086–10046; 104–10086–10047; 104–10086–10049; 104–10086–10053; 104–10086–10057; 104–10086–10058; 104–10086–10067; 104–10086–10069; 104–10086–10073; 104–10086–10075; 104–10086–10131; 104–10086–10137; 104–10086–10144; 104–10086–10149; 104–10086–10155; 104–10086–10156; 104–10086–10157; 104–10086–10158; 104–10086–10159; 104–10086–10160; 104–10086–10161; 104–10086–10184; 104–10086–10186; 104–10086–10202; 104–

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After consultation with appropriate Federal agencies, the Review Board announces that the following House Select Committee on Assassinations records are now being opened in full: 180–10075–10332; 180–10096–10370

After consultation with appropriate Federal agencies, the Review Board announces that the following National Security Agency records are now being opened in full: 144–10001–10000; 144–10001–10001; 144–10001–10002; 144–10001–10003; 144–10001–10004; 144–10001–10005; 144–10001–10006; 144–10001–10007; 144–10001–10008; 144–10001–10009; 144–10001–10010; 144–10001–10011; 144–10001–10012; 144–10001–10013; 144–10001–10014; 144–10001–10015; 144–10001–10016; 144–10001–10017; 144–10001–10018; 144–10001–10019; 144–10001–10020; 144–10001–10021; 144–10001–10022; 144–10001–10023; 144–10001–10024; 144–10001–10025; 144–10001–10048; 144–10001–10079; 144–10001–10152; 144–10001–10157; 144–10001–10160; 144–10001–10181; 144–10001–10182; 144–10001–10184; 144–10001–10187; 144–10001–10190; 144–10001–10192; 144–10001–10194; 144–10001–10196; 144–10001–10198; 144–10001–10208; 144–10001–10211; 144–10001–10220; 144–10001–10221; 144–10001–10223; 144–10001–10224; 144–10001–10225; 144–10001–10226; 144–10001–10228; 144–10001–10231; 144–10001–10232; 144–10001–10233; 144–10001–10234; 144–10001–10235; 144–10001–10237; 144–10001–10238; 144–10001–10239; 144–10001–10240; 144–10001–10241; 144–10001–10243; 144–10001–10244; 144–10001–10245; 144–10001–10247; 144–10001–10248; 144–10001–10250; 144–10001–10254; 144–10001–10255; 144–10001–10257; 144–10001–10258; 144–10001–10259; 144–10001–10262; 144–10001–10265; 144–10001–10266; 144–10001–10267

After consultation with appropriate Federal agencies, the Review Board announces that the following Warren Commission records are now being opened in full: 179–10002–10029; 179–10002–10057; 179–20001–10134; 179–20001–10135; 179–20001–10284; 179–20001–10346; 179–20001–10349; 179–20002–10318; 179–20002–10321; 179–20002–10431; 179–20003–10000; 179–20003–10047; 179–20003–10103; 179–20003–10192; 179–20003–10193; 179–20003–10217; 179–30001–10202; 179–30001–10204; 179–30001–10205; 179–30001–10207; 179–30001–10211; 179–30001–10213; 179–30001–10220; 179–30001–10221; 179–30001–10223; 179–30001–10255; 179–30001–10257; 179–30001–10262; 179–30001–10263; 179–30001–10264; 179–30001–10277; 179–30001–10278; 179–30001–10303; 179–30001–10311; 179–30001–10323; 179–30001–10340; 179–30001–10345; 179–30001–10347; 179–30001–10378; 179–30001–10383; 179–30001–10387; 179–30001–10428; 179–30001–10429; 179–30001–10432; 179–30001–10433; 179–30001–10435; 179–30001–10437; 179–30001–10439; 179–30001–10443; 179–30001–10444; 179–30001–10447; 179–30001–10449; 179–30001–10459; 179–30002–10003; 179–30002–10004; 179–30002–10006; 179–30002–10010; 179–30002–10013; 179–30002–10014; 179–30002–10028; 179–30002–10040; 179–30002–10046; 179–30002–10050; 179–30002–10060; 179–30002–10062; 179–30002–10075; 179–30002–10077; 179–30002–10128; 179–30002–10129; 179–30002–10130; 179–30002–10132; 179–30002–10133; 179–30002–10134; 179–30002–10135; 179–30002–10140; 179–30002–10141; 179–30002–10154; 179–30002–10156; 179–30002–10157; 179–30002–10164; 179–30003–10271; 179–30003–10279; 179–30003–10283; 179–40001–10202; 179–40001–10256; 179–40001–10414; 179–40002–10021; 179–40002–10038; 179–40002–10080; 179–40002–10093; 179–40002–10102; 179–40002–10112; 179–

40003–10020; 179–40003–10068; 179–40003–10263; 179–40003–10275; 179–40004–10330; 179–40004–10403; 179–40005–10079; 179–40005–10167; 179–40005–10287; 179–40005–10410; 179–40006–10262; 179–40006–10316; 179–40007–10263; 179–40010–10045; 179–40010–10067; 179–40010–10070

Dated: December 1, 1997.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 97–31804 Filed 12–3–97; 8:45 am]

BILLING CODE 6118–01–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: National Oceanic and Atmospheric Administration (NOAA).

Title: Management and Oversight of the National Estuarine Research Reserve System.

Agency Form Number: None.

OMB Approval Number: 0648–0121.

Type of Request: Reinstatement of a previously approved collection.

Burden: 14,345 hours.

Number of Respondents: 27 (43 responses per year).

Avg. Hours Per Response: Ranges between 2 and 2,000 hours depending on the requirement.

Needs and Uses: The National Estuarine Research Reserve System (NERRS) consists of carefully selected estuarine areas of the United States that are designated, preserved, and managed for research and educational purposes. Information from states is needed to review their proposals for site designations, to evaluate state requests for funding of the development of management plans and Environmental Impact Statements, and to ensure that the national standards continue to be met.

Affected Public: State, local or tribal government.

Frequency: On occasion, annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker (202) 395–3897.

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, N.W., 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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: November 28, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31777 Filed 12–3–97; 8:45 am]

BILLING CODE: 3510–08–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). This collection has been submitted under the emergency Paperwork Reduction Act procedures.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Archival Tag Recovery.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection—Emergency Review.

Burden: 7 hours.

Number of Respondents: 13

Avg. Hours Per Response: 30 minutes.

Needs and Uses: To investigate the migratory patterns of Atlantic bluefin tuna, a program has been undertaken to implant archival tags. In the event a fish with an archival tag is captured, applicable regulations could require its immediate release under certain conditions. In order to provide for maximum likelihood of data recovery, a regulation will be issued to exempt the harvest of fish with archival tags from other applicable requirements. Persons that harvest a tuna containing a tag are requested to provide certain information about the tuna (size, weight, location, etc.).

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

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, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503. A clearance has been requested by December 19, 1997.

Dated: November 26, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–31778; Filed 12–3–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Initiation of New Shipper Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper administrative review of the antidumping duty order on brake rotors from the PRC. In accordance with 19 C.F.R. 351.214(d), we are initiating this administrative review.

EFFECTIVE DATE: December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4194 or 482–1766, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''the Department'') regulations are to the provisions codified at 19 CFR part 351 (1997).

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests from China National Industrial Machinery Import & Export Company

(''CNIM''), Lai Zhou Auto Brake Equipments Factory (''LABEF''), Longkou Haimeng Machinery Co., Ltd. (''Haimeng''), Qingdao Gren Co. (''GREN''), Yantai Winhere Auto-Part Manufacturing Co., Ltd. (''Winhere''), and Zibo Luzhou Automobile Parts Co., Ltd. (''ZLAP'') in accordance with 19 CFR 351.214(d), for new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China (''PRC'') which has an April anniversary date. CNIM, LABEF, Haimeng, GREN, Winhere, and ZLAP (''the respondents'') have certified that each entity did not export brake rotors to the United States during the period of investigation (''POI''), and that each is not affiliated with any exporter or producer which did export brake rotors during the POI.

On October 29, 1997, the Coalition for the Preservation of American Brake Drums and Rotors Aftermarket Manufacturers (''the petitioner'') alleged that there were insufficiencies and inconsistencies in respondents' requests. The petitioner claimed that the respondents did not meet the legal requirements of 19 CFR 351.214 and 351.221, and requested that the Department decline to initiate new shipper reviews.

On October 31, 1997, the respondents submitted supplemental responses to the petitioner's comments, and rectified the deficiencies pointed out by the petitioner. Therefore, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper reviews as requested.

It is the Department's usual practice in cases involving non-market economies to require that companies seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly we will issue a separate rates questionnaire to the above-named respondents and seek additional information from the PRC government (as appropriate), allowing 30 days for response. If the responses from the respondents and the PRC government provide sufficient indication that the companies named are not subject to either *de jure* or *de facto* government control with respect to their exports of brake rotors, the review will proceed as to such companies. If, on the other hand, one or more respondents do not demonstrate their eligibility for a separate rate, then that or those PRC entities will be deemed to be affiliated with other companies that exported during the POI and that did not establish entitlement to a separate rate, and the review of any such companies will be terminated.

Initiation of Reviews

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on brake rotors from the PRC. We intend to issue the final results of these reviews not later than 270 days after the date of publication of this notice.

Antidumping duty proceeding	Period to be reviewed
PRC: Brake Rotors, A–570–846: China National Industrial Machinery Import & Export Co., Lai Zhou Auto Brake Equipments Factory, Longkou Haimeng Machinery Co., Ltd., Qingdao Gren (Group) Co., Yantai Winhere Auto-Part Manufacturing Co., Ltd.	03/01/97–9/30/97

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies. This action is in accordance with 19 CFR 351.214(d).

Interested parties that need access to the proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: November 28, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 97–31801 Filed 12–3–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent Licenses

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: this is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology (''NIST''), U.S. Department of Commerce, is contemplating the grant of field of use co-exclusive and exclusive licenses to the Government's interest, in the United States, to practice the inventions embodied in the following U.S. Patent and U.S. Patent Applications:

(1) U.S. Patent No. 5,634,718; issued June 3, 1997; titled ''Particle Calorimeter with Normal Metal Base Layer,'' NIST Docket No. 94–005; the availability of the invention for licensing was published in the **Federal Register,** Vol. 60, No. 55 (March 22, 1995);

(2) U.S. Patent Application No. 08/702,133; filed August 26, 1996; titled ''Superconducting Transition-Edge Sensor;'' NIST Docket No. 96–033; the availability of the invention for licensing was published in the **Federal Register**, Vol. 62, No. 89 (May 8, 1997);

(3) U.S. Patent Application No. 08/811,939; filed March 5, 1997; titled ''Microcalorimeter X-ray Detectors with X-ray Lens;'' NIST Docket No. 96–034; the availability of the invention for licensing was published in the **Federal Register**, Vol. 62, No. 203 (October 21, 1997); and

(4) U.S. Patent Application No. 08/900,982; filed July 25, 1997; titled ''Mechanical Support for a Two Pill Adiabatic Demagnetization Refrigerator,'' NIST Docket No. 96–035; the availability of the invention for licensing was published in the **Federal Register**, Vol. 62, No. 203 (October 21, 1997).

The grant of field of use co-exclusive licenses to invention (1) above is contemplated to both Quantum Design, Inc., having a placer of business in San Diego, California, and to Noran Instruments, Inc., having a place of business in Middleton, Wisconsin. The grant of field of use exclusive licenses to inventions (2), (3), and (4) above is contemplated to Noran Instruments, Inc., having a place of business in Middleton, Wisconsin.

The prospective co-exclusive and exclusive licenses may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: Comments must be received in writing no later than February 2, 1998.

ADDRESSES: Comments on the Prospective Grants must be submitted to: Ernest Graf, National Institute of

Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Ernest Graf, National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective co-exclusive and exclusive licenses 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 co-exclusive and exclusive licenses may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

(1) US Patent No. 5,634,718 describes the use of a normal metal absorber in a microcalorimeter, which gives significant advantages in increased detector speed and uniformity. Claims in the patent include use of a normal metal absorber in measuring energy events with particles or photons other than x-rays, construction using a thermally insulating membrane, normal metal superconductor (NS) contacts for thermal isolation, normal metal insulator superconductor (NIS) tunnel junctions, superconducting quantum interference device (SQUID) readout, ridge structures for fast heat diffusion, multiple temperature sensors for position readout and greater uniformity, and electronic heat pulses for calibration.

(2) US Patent Application 08/702,133 describes a reliable and manufacturable method of producing a superconducting film with a transition temperature that is tunable and in the range of interest (from approximately 50 to 300 mK). The superconducting components to the bilayers are Al and Ti. Al-based bilayers are readily manufacturable, produce reproducible transition temperatures, and can be readily incorporated with microfabrication technology.

(3) U.S. Patent Application No. 08/811,939 describes the combined use of polycapillary optics with microcalorimeter detectors. The invention enables present-day microcalorimeter spectrometers with areas under 0.1 mm^2 to have collection solid angles that are large enough for many practical applications. Although the construction of larger area detectors without capillary optics may be possible in the future, the use of x-ray optics has fundamental advantages because they enable the use of small detectors, which consequently have faster count rates and higher resolution.

(4) U.S. Patent Application No. 08/900,982 describes a practical implementation of dual Kevlar ™ string mechanical supports that are needed in a two pill refrigerator. The invention makes the supports easier to manufacture, assemble, and maintain in the field.

NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') to perform further research on the inventions for purposes of commercialization. NIST anticipates that such a CRADA will be conducted on a cost recovery basis. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

Copies of the patent and patent applications may be obtained from NIST at the foregoing address.

Dated: November 25, 1997.

Elaine Bunten-Mines,

Director, Program Office.

[FR Doc. 97–31781 Filed 12–3–97; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of Draft Proposed Comprehensive, Long Range Preservation Plan for the MONITOR National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: In section 4 of Public Law 104–238 (The National Marine Sanctuaries Preservation Act (Act); October 11, 1996), Congress directed the Secretary of Commerce to prepare a long-range, comprehensive plan for the management stabilization, preservation, and recovery of artifacts and materials of the USS MONITOR. NOAA, on behalf of the Secretary of Commerce, developed a draft plan, entitled ''Charting a New Course for the MONITOR: Comprehensive, Long Range Preservation Plan with Options for Management, Stabilization, Preservation, Recovery, Conservation and Exhibition of Materials and Artifacts from the MONITOR National Marine Sanctuary.'' The draft plan presents a range of options including a comprehensive management strategy that should ensure that, insofar as possible, the MONITOR will be preserved and protected for future generations. The draft plan recommends the application of state-of-the-art technology in overcoming the present rapid deterioration of the MONITOR through the combined strategies of stabilization and selective recovery.

DATES: Comments on the draft plan are invited and will be considered if submitted in writing by February 2, 1998.

ADDRESSES: Copies of the draft plan may be obtained from Dana Hill, MONITOR National Marine Sanctuary, The Mariners Museum, 100 Museum Drive, Newport News, VA 23606, tel. (757) 599–3122.

The draft plan is also published on the World Wide Web at http://www/nos.gov/nmsp/monitor/

Comments should be submitted to John Broadwater, Manager, MONITOR National Marine Sanctuary, The Mariners Museum, 100 Museum Drive, Newport News, VA 23606.

FOR FURTHER INFORMATION CONTACT: Dana Hill at (757) 599–3122.

SUPPLEMENTRY INFORMATION:

I. Background

The USS MONITOR was a radical departure from traditional warship design. The vessel was built almost entirely of iron; it was fully steam powered with no masts or sails; the engineering spaces, crews and officers quarters, and galley were all below the waterline; the hull was completely armored with a 5-foot-high, 32-inch-thick armor belt encircling the vessel for protection during battle. The most novel feature was the MONITOR's 22-foot-diameter, 9-foot-high iron turret. Positioned amidships, the armored turret could be rotated to train its two 11-inch Dahlgren smoothbore cannon in any direction.

The MONITOR was launched at Greenpoint, New York, on January 30, 1862. In early March, the MONITOR was ordered to Hampton Roads, Virginia, where on March 9 it engaged the CSS VIRGINIA, a Confederate ironclad constructed over the modified hull of the scuttled USS MERRIMACK. In the ensuing four-hour battle, the two vessels frequently bombarded each other at point-blank range with no substantial damage to either vessel. Although the battle ended in a draw, the MONITOR's performance impressed the

U.S. Navy and introduced features including full iron armor, low freeboard and revolving turret that altered naval technology forever.

Shortly after midnight on December 31, 1862, while under tow by the USS RHODE ISLAND to Beaufort, North Carolina, the MONITOR sank in a storm off Cape Hatteras, North Carolina, with a loss of sixteen officers and crewmen.

In 1973 the wreck of the USS MONITOR was located by an interdisciplinary scientific team operating from the Duke University Research Vessel EASTWARD. A second expedition in April 1974, partly sponsored by the U.S. Navy and the National Geographic Society, provided detailed photographic documentation from which an assessment of the wreck was made. A photomosaic produced by the Naval Intelligence Division revealed that, with the exception of damage to the stern section and the collapse of the lower hull forward of the midships bulkhead, the wreck was in relatively good condition.

In recognition of the MONITOR's significance in American history and its profound impact on naval technology, the MONITOR was designated by the Secretary of Commerce as the first National Marine Sanctuary on January 30, 1975, pursuant to Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (renamed the National Marine Sanctuaries Act or NMSA), 16 U.S.C. 1431 *et seq.* Regulations implementing the designation are found at 15 CFR part 922, subpart F. NOAA is responsible for the management of the Sanctuary. The Sanctuary encompasses a vertical column of water one nautical mile in diameter 16 miles off the coast of Cape Hatteras, North Carolina. The wreck of the MONITOR lies upside down in 230 feet of water, with the stern resting on the displaced turret, which is also upside down. Since 1977 NOAA has conducted numerous expeditions to the MONITOR designed to generate information on the condition of the wreck.

Since 1991, a dramatic increase in the deterioration of the MONITOR's hull has been documented, leading NOAA to conclude that the collapse of the MONITOR's hull is imminent. In 1992, responding to the alarming degradation of the MONITOR's hull, NOAA commenced a broad range of initiatives including several expeditions to the Sanctuary, a cooperative effort with the U.S. Navy to help stabilize the MONITOR's hull, and development of a comprehensive plan for management of the Sanctuary and possible recovery of portions of the MONITOR. Because of the importance of these efforts and the limitations on funding, NOAA developed partnerships with several organizations, including the U.S. Navy, the National Undersea Research Program, The Mariners Museum, private dive groups and organizations, and others.

In 1993 and 1995, NOAA conducted major engineering and archaeological surveys at the Sanctuary in conjunction with further archival research and several small-scale site operations. Private research divers also assisted NOAA during this period in the recovery of additional data on the MONITOR's condition. This research concluded that a concerted, well-planned effort would be required to preserve the remains of the MONITOR. Planning efforts were initiated for the conduct of additional archival, engineering and on-site research aimed at identifying viable options for the preservation of the MONITOR. NOAA also communicated the situation to Congress and the public.

In 1996, Congress directed the Secretary of Commerce to prepare a long-range, comprehensive plan for the management, stabilization, preservation, and recovery of artifacts and materials of the USS MONITOR. Section 4 of Public Law 104–238 (The National Marine Sanctuaries Preservation Act (Act); October 11, 1996. The Secretary was also directed, to the extent feasible, to utilize the resources of other Federal and private entities with expertise and capabilities that are helpful. NOAA, on behalf of the Secretary of Commerce, developed a draft plan, entitled ''Charting a New Course for the MONITOR: Comprehensive, Long Range Preservation Plan with Options for Management, Stabilization, Preservation, Recovery, Conservation and Exhibition of Materials and Artifacts from the MONITOR National Marine Sanctuary.'' The draft plan presents a range of options including a comprehensive management strategy that should ensure that, insofar as possible, the MONITOR will be preserved and protected for future generations. The draft plan recommends the application of state-of-the-art technology in overcoming the crisis at the Sanctuary through the combined strategies of stabilization and selective recovery.

II. Summary of the Draft Plan

The draft plan includes a wide range of options for comprehensive preservation and management of the MONITOR National Marine Sanctuary. In developing these options, NOAA reviewed all previous reports and proposals for on-site activities, including papers presented at a MONITOR conference in Raleigh, North Carolina, previous engineering and corrosion reports and the Draft Revised Management Plan for the MONITOR National Marine Sanctuary (NOAA 1982), all of which addressed preliminary recommendations. NOAA sought and received assistance from the U.S. Navy, Oceaneering International, Inc., The Mariners Museum, and others. In addition, NOAA held informal discussions with numerous engineers, archaeologists, and other specialists in order to identify new technology that might be applicable for the MONITOR situation. The draft plan presents all options for stabilizing and/or preserving the MONITOR that were identified by NOAA as viable. The plan contains sufficient information to permit the formulation of a comprehensive phased approach to the problem. Once an option (or combination of options) has been selected, it will be necessary to seek expert assistance from appropriate disciplines (ocean engineers, nautical archaeologists, artifact conservators, etc.) to assist with the development of a detailed implementation plan.

The draft plan presents several options along with pertinent information on advantages, disadvantages, required action and estimated costs. Advantages and disadvantages address potential impacts on the MONITOR and its contents. Options are discussed and compared, and recommendations are presented.

Since the MONITOR is listed on the National Register of Historic Places, and in addition, is a National Historic Landmark, any plan proposing on-site activities that could disturb the site in any way must be reviewed by state and Federal officials, in compliance with section 106 of the National Historic Preservation Act, and other pertinent laws.

In establishing an archaeology plan, consideration must be given to the fact that the MONITOR's hull and contents are threatened with damage or loss due to the rapid deterioration of the hull and loss of structural integrity. NOAA considers the MONITOR to be a threatened site and, therefore, will develop the archaeology plan accordingly. Federal law includes special provisions for threatened sites, with consideration being given to the relative impact to a threatened resource if left undisturbed versus taking positive action to preserve the resource. In the MONITOR's case, an effective argument can be made that if positive steps are not taken to stabilize the hull and/or recover some of the material, the entire

site could be irreparably damaged by continued deterioration in as little as one to five years. The draft plan is in keeping with the National Marine Sanctuaries Program's Strategic Plan for the 21st Century. The Program's primary goal is to protect sanctuary resources, making our sanctuaries world-class models for effective, innovative management of protected areas (Sanctuaries and Reserves Division 1997).

III. Summary of Options

The options in the draft plan are summarized as follows:

A. Non-intervention. With this option, NOAA would continue to manage the Sanctuary in accordance with the current policy but would take no action to prevent continuing deterioration. This option would allow nature to take its course, likely resulting in the ultimate collapse of the MONITOR's hull.

B. In Situ Preservation by Encapsulation. With this option, the MONITOR would be entombed in some acceptable manner (i.e. covering with sand, grass mats, etc.). Possible impacts on the MONITOR and its environment might include additional damage to the wreck due to the weight of the covering material and the loss of access to the wreck.

C. In Situ Preservation by Shoring. This option would be accomplished through the use of approved methods and materials, such as sand bags, grout bags, or jacks, to support portions of the hull that are suspended above the bottom by the position of the turret. Impact to the MONITOR and its environment would be negligible and some portions of the wreck would be given improved support.

D. In Situ Preservation by Cathodic Protection. This option would involve the installation of a passive (sacrificial anode) or active (impressed current) cathodic protection system to reduce the corrosive action from the marine environment. Impact to the MONITOR and its environment is uncertain, and would not prevent inevitable collapse.

E. Selective Recovery. This option includes a selective approach to recovering hull components and artifacts that are of significant historic value. Objects being considered for selective recovery include the propeller, turret, cannons, engine and small artifacts. Possible impact to the MONITOR and its environment might include unavoidable damage to other portions of the wreck and contents during recovery operations.

F. Full Recovery. In this option, the entire hull, turret, cannons and all contents would be recovered, conserved, and, eventually displayed. This could include recovery of the entire hull as a single unit or a series of smaller recoveries. Possible impact to the MONITOR might include damage during recovery of portions of the hull and contents; however, if raised, the MONITOR could be conserved and reconstructed for display.

G. Selective Recovery Followed by Encapsulation. This option combines selective recovery with in situ preservation by encapsulation. Following recovery of all selected hull components and artifacts, the site would be encapsulated for protection of the remaining cultural material. Possible impact to the MONITOR might include unavoidable damage to other portions of the wreck and contents during recovery operations and additional damage to the wreck due to the weight of the covering material and the loss of access to the wreck.

H. Selective Recovery Combined with Shoring. This option combines selective recovery with in situ preservation by shoring of the remaining material, which would provide improved support. Possible impact to the MONITOR and its environment might include unavoidable damage to other portions of the wreck and contents during recovery operations.

I. Expanded Enforcement of Sanctuary Regulations. This option addresses evidence of increased illegal encroachment on the Sanctuary by increasing enforcement activities at the site to prevent further damage from illegal activities. Unless combined with one or more of the other options, the only impact might be a reduction of damage from human causes.

Because of the MONITOR's significance in American history and its status as a National Historic Landmark, NOAA is making this draft plan available to the public and invites comments and other pertinent information.

Dated: November 28, 1997.

Captain Evelyn J. Fields,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–31748 Filed 12–3–97; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board's Special Committee to Review the Voluntary National Tests Development Contract. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

Date: December 16, 1997.

Time: 9:30 a.m. to 4:00 p.m.

Location: St. Louis Airport Marriott; I–70 at Lambert International Airport; St. Louis, Missouri, 63134.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994 (Title IV of the Improving Americas Schools Act of 1994) (Pub. L. 103–382).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons. Under Public Law 105–78, the National Assessment Governing Board is granted exclusive authority over developing Voluntary National Tests pursuant to contract number RJ97153001 and is required to review within 90 days (i.e., by February 11, 1998) and modify the contract to the extent the Board determines necessary; if the contract cannot be modified to the extent the Board determines necessary, the contract shall be terminated, and a new contract negotiated.

On December 16, 1997 the National Assessment Governing Board's Special Committee to Review the Voluntary National Tests Development Contract will hold a closed meeting. The purpose of the meeting is for the NAGB Special Committee to review the Test Development Contract, to formulate its recommendations to the NAGB for modification or termination and recompetition of the Development Contract for the Voluntary National Tests. This information relates to the source selection criteria by which government contracts may be modified

or awarded. Not only would the disclosure of such data implicate proscriptions set forth in the Federal Acquisition Regulations, but also such disclosure would significantly frustrate a proposed agency action. Specifically, disclosure of the Subcommittee's discussion prematurely, including contract specifications and government cost estimates, could affect private decisions made by the contractor which might damage the financial interests of the government as a whole, by, for example, increasing the costs to the government, and might make it impossible for the two sides to reach agreement. Such matters are protected by exemption 9B of Section 552b(c) of Title 5 U.S.C.

A summary of the activities of this closed meeting and other related matters, which are informative to the public and consistent with the policy of the Section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, D.C., from 8:30 a.m. to 5:00 p.m.

Dated: December 1, 1997.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 97–31774 Filed 12–3–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Program Special Projects Financial Assistance

AGENCY: The Department of Energy.

ACTION: Notice for 1998 State Energy Program special projects.

SUMMARY: As options offered under the State Energy Program (SEP) for fiscal year 1998, the Office of Energy Efficiency and Renewable Energy is announcing the availability of financial assistance to States for a group of special project activities. Funding is being provided by a number of end-use sector programs in the Office of Energy Efficiency and Renewable Energy. States may apply to undertake any of the projects being offered by these programs. States that are awarded funding for special projects will carry out their projects in conjunction with their efforts under SEP, with the special projects funding and activities tracked separately so that the end-use sector programs may follow the progress of their projects.

The projects must meet the relevant requirements of the programs providing the funding, as well as of SEP, as specified in the program guidance/solicitation. Among the goals of the special projects activities are to assist States to: Accelerate deployment of energy efficiency and renewable energy technologies; facilitate the acceptance of emerging and underutilized energy efficiency and renewable energy technologies; and increase the responsiveness of Federally funded technology development efforts to private sector needs.

DATES: The program guidance/solicitation is expected to be December 5, 1997. Applications must be received by February 14, 1998.

ADDRESSES AND FOR FURTHER INFORMATION CONTACT: Ms. Faith Lambert at the U.S. Department of Energy Headquarters, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–2319, for referral to the appropriate DOE Regional Support Office.

SUPPLEMENTARY INFORMATION: Fiscal year 1998 is the third year special project activities are funded in conjunction with the State Energy Program (10 CFR part 420). Most of these State-oriented special projects are related to or based on similar efforts that have been funded separately by the various DOE end-use sector programs that are now providing funding for these optional SEP activities.

Availability of Fiscal Year 1998 Funds

With this publication, DOE is announcing the availability of $11.825 million in financial assistance funds for fiscal year 1998. The awards will be made through a competitive process. The end-use sector programs that are participating in the SEP special projects for fiscal year 1998, with the estimated minimum amount of funding available for each, are as follows:

- Clean Cities: Accelerating the introduction and increasing the use of alternative fuels and alternative fueled vehicles through the development of infrastructure and clean corridors ($2.0 million).
- Federal Energy Management Program: Developing Federal/State partnerships to increase technical capability and funding for energy efficiency, renewable energy, and water conservation measures for Federal and State buildings ($975,000).
- Industrial Programs: Accelerating industrial and clean production opportunities with regional industries through the programs of the Industrial Alliance (Inventions and Innovation, NICE[3], Industrial Assessment Centers, Motor Challenge, Climate Wise, and Steam Partnership. ($2.35 million)
- Rebuild America: Helping community and regional partnerships improve commercial and multifamily building energy efficiency ($1.0 million).
- Codes and Standards: Supporting States' actions to update, implement, and enforce residential and commercial building energy codes ($4.0 million).
- Utility Technologies: Projects to demonstrate and increase utilization of renewable energy sources, such as biomass, geothermal heat pumps, hydrogen technology, photovoltaics for utility scale applications, and wind energy ($1.5 million).

Restricted Eligibility

Eligible applicants for purposes of funding under this program are limited to the 50 States, the District of Columbia, Puerto Rico, or any territory or possession of the United States, specifically, the State energy or other agency responsible for administering the State Energy Program pursuant to 10 CFR part 420. For convenience, the term State in this notice refers to all eligible State applicants.

The Catalog of Federal Domestic Assistance number assigned to the State Energy Program is 81.041.

Requirements for cost sharing or matching contributions will be addressed in the program guidance/solicitation for each special project activity, as appropriate. Cost sharing or matching contributions beyond any required percentage are desirable.

Any application must be signed by an authorized State official, in accordance with the program guidance/solicitation.

Evaluation Review and Criteria

A first tier review for completeness will occur at the appropriate DOE Regional Support Office. Applications found to be complete will undergo a merit review process by panels comprised of members representing the respective participating end-use sector programs in DOE's Office of Energy Efficiency and Renewable Energy. A decision as to the applications selected for funding will then be made by the Deputy Assistant Secretary for Building Technology, State and Community Programs, or designee, based on the findings of the technical merit review and any stated program policy factors. DOE reserves the right to fund, in whole

or in part, any, all or none of the applications submitted in response to this notice.

More detailed information is available from the U.S. Department of Energy Headquarters at (202) 586–2319.

Issued in Washington, D.C., on November 28, 1997.

Joseph Romm,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–31788 Filed 12–3–97; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4745–000]

Alpena Power Marketing, L.L.C.; Notice of Issuance of Order

December 1, 1997.

Alpena Power Marketing, L.L.C. (Alpena Marketing) filed an application for authorization to engage in the wholesale sale and brokering of electric capacity and energy at market-based rates, and for certain waivers and authorizations. In particular, Alpena Marketing requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Alpena Marketing. On November 13, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above—docketed proceeding.

The Commission's November 13, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (F):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Alpena Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Alpena Marketing is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Alpena Marketing, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Alpena Marketing's issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 15, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31784 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–81–000]

Colt Electric Corporation; Notice of Issuance of Order

December 1, 1997.

Colt Electric Corporation (Colt) submitted for filing a rate schedule under which Colt will engage in wholesale electric power and energy transactions as a marketer. Colt also requested waiver of various Commission regulations. In particular, Colt requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Colt.

On November 17, 1997, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Colt 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).

Absent a request for hearing within this period, Colt is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Colt's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 17, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31783 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–33–000 and EL98–9–000]

Enron Power Marketing, Inc.; Order Accepting Rate Schedule for Filing, as Modified, Granting Waiver of Notice, and Announcing Policy Concerning Reassignment of Transmission Capacity by Power Marketers

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey

Issued November 28, 1997.

In this order, we accept for filing Enron Power Marketing, Inc.'s (Enron Marketing's) proposed rate schedule for reassignment of transmission rights, subject to certain modifications. We also inform all power marketers of an amendment to their existing rate schedules pertaining to reassignment of transmission rights, and waive the prior notice and filing requirements with respect to reassignments of transmission capacity by power marketers.

Background

On October 3, 1997, Enron Marketing submitted for filing a proposed tariff for the sale, assignment, or transfer of transmission rights procured under any open access transmission rate schedule by Enron Marketing on the transmission system of any transmission provider.

Enron Marketing's rate schedule provides that the charges for such transmission service would be capped at

a price not to exceed the highest of: (1) The original transmission rate paid by Enron Marketing; (2) the transmission provider's maximum stated firm transmission rate at the time of the transmission reassignment; or (3) Enron Marketing's own opportunity costs capped at the cost of expansion at the time of reassignment. The rate schedule further provides that prior to any reassignment at a price based on opportunity costs, Enron Marketing will first file for Commission authorization pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (1994).

In addition, Enron Marketing commits to provide the Commission information concerning each reassignment in the quarterly transaction reports it files with the Commission for its power sales.[1] The specified information is: (1) The date of the assignment; (2) the name of the buyer; (3) the amount and type of transmission (*e.g.*, firm or non-firm); (4) the identity of the transmission system on which the reassigned capacity exists; and (5) the length of the assignment.

Enron Marketing requests waiver of the Commission's 60-day prior notice and filing requirement to allow an effective date of April 24, 1997.

Notice of Enron Marketing's filing was published in the **Federal Register**, 62 FR 55,240 (1997), with comments, protests, and interventions due on or before October 29, 1997. None was filed.

Discussion

The Commission's Policy

The Commission stated in Order No. 888 that a public utility that reassigns transmission capacity must ''have on file with the Commission a Rate Schedule governing reassigned capacity.'' [2] We recently affirmed and clarified this policy in *Southwestern Public Service Company*, 80 FERC ¶ 61,245 at 61,905 (1997), *reh'g pending (Southwestern)*. In that order, we rejected the argument of a power marketer (Electric Clearinghouse, Inc.) that requiring all public utilities, including power marketers, to have on file a rate schedule for capacity reassignments would be unduly burdensome and would serve no purpose.

The Instant Proceeding

Enron Marketing's filing is consistent with the Commission's requirements regarding reassignment of transmission capacity.[3] The proposed reassignment provisions would not allow Enron Marketing to acquire or reassign transmission service without complying with the open access transmission tariffs of transmission providers, and none of the procedures for transmission service under those tariffs is changed or modified by the proposed reassignment provisions. Accordingly, we will accept Enron Marketing's proposed rate schedule for filing.

Enron Marketing states that the Commission has not established specific filing requirements in connection with reassignments of transmission capacity by power marketers. Enron Marketing proposes that, rather than file with the Commission a service agreement each time Enron Marketing makes a capacity reassignment, it provide in its quarterly transaction reports the information indicated above. Enron Marketing states that this is the same information that the Commission requires transmission-owning public utilities to provide when they file service agreements with the Commission.[4]

We agree that the quarterly transaction report is an appropriate place to provide the necessary information. However, the information Enron Marketing proposes to include with its reports exceeds that which we require transmission providers to include in their umbrella service agreements for capacity reassignments. We require transmission providers to report only the name of the assignee.[5] We will, therefore, require Enron Marketing to include only that information in its quarterly reports.

Finally, Enron Marketing states that it was not aware until *Southwestern* was issued that ''non-traditional public utilities, such as power marketers,'' are subject to this requirement. Enron Marketing further states that, since learning of its obligation, it has acted promptly to ascertain its responsibilities and to comply. Because Enron Marketing made its first reassignment of capacity on April 24, 1997, it seeks waiver of the 60-day prior notice and filing requirement. We find good cause exists to grant Enron Marketing's request for waiver of the 60-day notice and filing requirement and we will allow the proposed rate schedule to become effective, as requested, on April 24, 1997.

Applicability to Other Power Marketers Reassigning Transmission Capacity

We take this opportunity to clarify, as explained in *Southwesetern*, the applicability of the transmission capacity reassignment filing requirements to all power marketers. In order to avoid the need for each power marketers. In order to avoid the need for each power marketer to file for Commission review an individual rate schedule for the reassignment of transmission capacity, we hereby inform all power marketers that their existing rate schedules will be amended to include the following language:

> This power marketer may reassign transmission capacity that it has reserved for its own use at a price not to exceed the highest of: (1) The original transmission rate paid by the power marketer; (2) the applicable transmission provider's maximum stated firm transmission rate on file at the time of the transmission reassignment; or (3) the power marketer's own opportunity costs, capped at the applicable transmission provider's cost of expansion at the time of the sale to the eligible customer. The power marketer will not recover opportunity costs in connection with reassignments without making a separate filing under Section 205. Except for the price, the terms and conditions under which the reassignment is made shall be the terms and conditions governing the original grant by the transmission provider. Transmission capacity may only be reassigned to a customer eligible to take service under the transmission provider's open access transmission tariff or other transmission rate schedules. This power marketer will report the name of the assignee in its quarterly reports.

With the preceding language inserted in their existing rates schedules, all power marketers will have Commission authorization to engage in transmission capacity reassignments, without the necessity of making individual filings.[6]

Consistent with our action above granting Enron Marketing's request for waiver, we find good cause exists to waive the prior notice and filing requirement for all power marketers

[1] Enron previously has received Commission authorization to engage in wholesale power sales at market-based rates as a power marketer. See Enron Power Marketing, Inc., 65 FERC ¶ 61,305, *order on clarification and reh'g*, 66 FERC ¶ 61,244 (1994). The Commission subsequently accepted for filing changes to Enron's market-based rate schedule to reflect a merger between Enron Marketing's corporate parent and Portland General Corporation. See Enron Corporation, *et al.*, 78 FERC ¶ 61,179 (1997).

[2] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 at 31,697 n.324 (1996), *order on reh'g*, Order No. 888–A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 at 30,224 n.151 (1997), *order on reh'g*, Order No. 888–B, 62 FR ____ (1997), 81 FERC ¶ 61,248 (1997).

[3] See Order No. 888, FERC Stats. & Regs. at 31,694–97; Order No. 888–A, FERC Stats. & Regs. at 30,219–25; Commonwealth Edison Company, 78 FERC ¶ 61,312 at 62,335–36 (1997).

[4] See, *e.g.*, Virginia Electric and Power Company, 81 FERC ¶ 61,125, slip op. at 3 (1997).

[5] See, *e.g.*, Griffin Energy Marketing, L.L.C., 81 FERC ¶ 61,133, slip op. at 5 (1997).

[6] Any filings made after the date of the order by a power marketer seeking market-based or cost-based rates shall include this language in its proposed rate schedule.

with respect to transmission capacity reassignments. The effective date of the rate schedule amendment will be the date of the first reassignment.

Finally, consistent with the reporting requirement applied to Enron Marketing, we will require power marketers to include only the name of the assignee in their quarterly transaction reports. To the extent any power marketers already have made reassignments, they are directed to incorporate the required information in their next quarterly transaction report.

The Commission Orders

(A) Enron Marketing's request for waiver of the 60-day notice and filing requirement is hereby granted, and the proposed rate schedule for the reassignment of transmission capacity, as modified, is hereby accepted for filing, effective April 24, 1997.

(B) Enron Marketing is hereby informed of the following rate schedule designation: *Enron Power Marketing, Inc.*, Rate Schedule FERC No. 40.

(C) The power marketer rate schedules on file with the Commission are hereby revised, effective as of the date of the first reassignment of transmission capacity, to include the language discussed in the body of this order.

(D) The Secretary is hereby directed to arrange for the prompt publication of this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31782 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–851–001]

H.Q. Energy Services (U.S.) Inc.; Notice of Issuance of Order

November 28, 1997.

H.Q. Energy Services (U.S.) Inc. (H.Q. Energy) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, H.Q. Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by H.Q. Energy. On November 12, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's November 12, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (G), (H), and (J):

(G) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by H.Q. Energy 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.

(H) Absent a request to be heard within the period set forth in Ordering Paragraph (G) above, H.Q. Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of H.Q. Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(J) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of H.Q. Energy's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 12, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31760 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–326–013 and RP95–242–012]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1997.

Take notice that on November 25, 1997, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fifth Revised Sheet No. 19 and Seventh Revised Sheet No. 20, to be effective January 1, 1998.

Natural states that the purpose of this filing is to implement certain provisions applicable to Rate Schedule BESS and NSS, and certain rates derived from the Rate Schedule BESS rate pursuant to the Stipulation and Agreement (Settlement) filed by Natural, in Docket Nos. RP95–326–010 and RP95–242–010 on May 31, 1996. The Settlement represents a comprehensive resolution of Natural's pending general rate case, which was approved by the Commission in a letter order issued on November 3, 1997, in said dockets.

Natural requested any waivers that may be required to permit the tendered tariff sheets to become effective on January 1, 1998.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies, and all parties set out on the official service lists in Docket Nos. RP95–326 and RP95–242.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31763 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–4636–000; ER97–4652–000; ER97–4653–000; ER97–4654–000]

NEV, L.L.C., NEV East, L.L.C., NEV California, L.L.C.; NEV Midwest, L.L.C.; Notice of Issuance of Order

November 28, 1997.

NEV, L.L.C. (NEV), NEV East, L.L.C. (NEV East), NEV California, L.L.C. (NEV California), and NEV Midwest, L.L.C. (NEV Midwest) (hereafter Applicants), filed identical applications for authorization to sell capacity and energy at market-based rates, and for certain waivers and authorizations. In

particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On November 12, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's November 12, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by NEV, NEV East, NEV California, and NEV Midwest 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.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Applicants's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 12, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31761 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–275–010]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1997.

Take notice that on November 25, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, with an effective date of December 1, 1997:

Substitute Sixth Revised Sheet No. 54

On November 21, 1997, Northern filed tariff sheets to revise Mainline fuel retention percentages and the unaccounted for (UAF) percentage on Northern's system to be effective from December 1, 1997 through May 31, 1998, as agreed to at the settlement conference held on November 13, 1997, before Settlement Judge H. Peter Young. In this November 21, 1997, filing, Northern correctly stated all fuel percentages on Sheet Nos. 61–64, as agreed to by the active parties (the Parties) in these dockets at the settlement conference. However, Northern inadvertently failed to revise the Market Area fuel percentage on Sheet No. 54 to 1.23%. The reason for the instant filing is to correctly reflect the Market Area fuel percentage on sheet No. 54 as 1.23%.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31765 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4281–000]

NRG Power Marketing, Inc., Notice of Issuance of Order

November 28, 1997.

NRG Power Marketing Inc. (NRG Power), an affiliate of Northern States Power Company, filed an application for authorization to sell electric energy and capacity at market-based rates. NRG Power also requested certain waivers and authorizations. In particular, NRG Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances and assumptions of liabilities by NRG Power. On November 12, 1997, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's November 12, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by NRG Power 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.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, NRG Power is hereby authorized, pursuant to section 204 of the FPA, to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issued or assumption is for some lawful object within the corporate purposes of NRG Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of NRG Power's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 12, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31762 Filed 12–3–97; 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; Southern California Edison Company; San Diego Gas and Electric Company; Notice of Filing

November 28, 1997.

Take notice that on November 26, 1997, the California Independent System Operator Corporation (ISO) filed for Commission approval in this docket, pursuant to Rule 216 of the Commission's Rules and Regulations, a notice to withdraw a portion of an application to amend the ISO Tariff Sections 11.3.2 and 11.3.3 filed on November 21, 1997, and filed an application for Section 205 approval of a revised Section 11.3.2 and waiver of the 60 day notice requirement to allow the proposed tariff amendment to take effect on January 1, 1998.

The ISO states that the notice of withdrawal of the proposed tariff amendments regarding daily, weekly and monthly settlements and billing is 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 8, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31759 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–536–001]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

November 28, 1997.

Take notice that on November 24, 1997, Panhandle Eastern Pipe Line Company (Panhandle), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the corrected tariff sheets listed on Appendix A to its filing, to become effective on November 1, 1997 and December 1, 1997, respectively.

Panhandle states that this filing corrects a clerical error on its tariff sheets to reflect the ST Volumetric Surcharge of 3.00¢ applicable to Rate Schedules IT and EIT during the twelve month Section 18.13 Reconciliation Recovery Period.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies, and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31766 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–98–000]

Texas Eastern Transmission Corporation; Koch Gateway Pipeline Company; Notice of Application

November 28, 1997.

Take notice that on November 21, 1997, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, and Koch Gateway Pipeline Company (Koch) (jointly referred to as Applicants), filed in Docket No. CP98–98–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service by and between themselves, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants assert that they have agreed to terminate the exchange service pursuant to a letter agreement, dated April 12, 1996, which is evidenced by Texas Eastern's Rate Schedule X–131 and Koch's Rate Schedule X–168.

Any person desiring to be heard or to make protest with reference to said application should on or before December 19, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed 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 provided for, unless otherwise advised, it will be

unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31764 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG94–75–000, et al.]

Entergy Power Development Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 26, 1997.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Development Corporation

[Docket No. EG94–75–000]

Take notice that on November 6, 1997, pursuant to Section 365.7 of the Commission's Regulations, 18 CFR 365.7, Entergy Power Development Corporation filed notification that it surrenders its status as an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

2. United States Department of Energy—Western Area Power Administration

[Docket No. EF98–5041–000]

Take notice that on November 19, 1997, the Deputy Secretary of the Department of Energy submitted a request for final confirmation and approval of the Western Area Power Administration's Rate Schedules for Wholesale Firm Power Service (PD–F6), Firm Transmission Service (PD–FT6), Firm Transmission Service of Salt Lake City Area Integrated Projects Power (PD–FCT6), and Nonfirm Transmission Service (PD–NFT6) from the Parker-Davis Project for service to existing contractors. The Deputy Secretary requests confirmation and approval for a 59-month period beginning November 1, 1997, and ending September 30, 2002.

Comment date: December 18, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. EP EDEGEL, Inc.

[Docket No. EG94–78–000]

Take notice that on November 6, 1997, pursuant to Section 365.7 of the Commission's Regulations, 18 CFR 365.7, EP EDEGEL, Inc., filed notification that it surrenders its status as an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

4. Equitable Power Services Co., Petroleum Source & Systems Group Inc., Strategic Energy Ltd., et al.

[Docket No. ER94–1539–014, Docket No. ER95–266–011, and Docket No. ER96–3107–004 (not consolidated)]

Take notice that the following informational filings have been made with the Commission an are on file and available for public inspection and copying in the Commission's Public Reference Room:

On October 15, 1997, Equitable Power Services Co. filed certain information as required by the Commission's September 8, 1994, order in Docket No. ER94–1539–000.

On October 15, 1997, Petroleum Source & Systems Group, Inc. filed certain information as required by the Commission's January 18, 1995, order in Docket No. ER95–266–000.

On October 15, 1997, TransCanada Power filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–692–000.

On October 14, 1997, Wilson Power & Gas Smart, Inc. filed certain information as required by the Commission's April 25, 1995, order in Docket No. ER95–751–000.

On October 15, 1997, Energy Resource Management Corporation filed certain information as required by the Commission's December 20, 1995, order in Docket No. ER96–358–000.

On October 14, 1997, NGTS Energy Services filed certain information as required by the Commission's November 1, 1996, order in Docket No. ER96–2892–000.

On October 16, 1997, Strategic Energy Ltd. filed certain information as required by the Commission's November 13, 1996, order in Docket No. ER96–3107–000.

5. Northeast Utilities Service Co.

[Docket Nos. ER95–1686–004 and ER96–496–005]

Take notice that Northeast Utilities Service Company (''NUSCO''), on November 17, 1997, tendered for filing a schedule reflecting unbundled settlement rates for firm transmission and Scheduling, System Control and Dispatch services in compliance with an October 17, 1997 order in the captioned dockets.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Nevada Power Company

[Docket No. ER96–447–001]

Take notice that on November 10, 1997, Nevada Power Company (''Nevada Power'') tendered for filing, in Docket No. ER96–447–000, revised tariff sheets which specify the on-peak and off-peak hours of non-firm point-to-point transmission service in compliance with the Commission's order dated October 17, 1997. Nevada Power requests a waiver of the 60 day notice requirement and requests that the revised tariff sheets be effective as of the date of the filing.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of Colorado

[Docket No. ER96–713–001]

Take notice that on November 10, 1997, Public Service Company of Colorado filed a correction to the Energy Charge contained in the Rate for Generation Service under Rate Schedule FERC No. 44 to the City of Burlington, Colorado.

Copies of the filing have been served on the affected customer and on the Public Utilities Commission of the State of Colorado.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER96–2585–002]

Take notice that on November 17, 1997, pursuant to the Commission's letter order dated October 17, 1997, Niagara Mohawk Power Corporation submitted an amended Market-Based Power Sales Tariff in the above-captioned docket.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER97–3359–001]

On November 13, 1997, Florida Power & Light Company submitted its compliance filing as requird under the Commission's October 29, 1997 order in this proceeding.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER97–3447–000]

Take notice that Northeast Utilities Service Company, on behalf of Public Service Company of New Hampshire, tendered for filing, an amendment to its filing in this docket.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corporation

[Docket No. ER97–4143–001]

Take notice that on November 17, 1997, American Electric Power Service Corporation tendered for filing an amendment in the above-referenced docket, in compliance with the Commission's Order Conditionally Accepting for Filing Proposed Market Based Rates.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Virginia Electric and Power Company

[Docket No. ER97–4498–001]

Take notice that on November 17, 1997, Virginia Electric and Power Company tendered for filing a revised form of network integration service agreement providing for its use of its transmission system in connection with requirements service to its wholesale power customers.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Co.

[Docket No. ER97–4553–001]

Take notice that on November 10, 1997, Louisville Gas and Electric Company (LG&E) tendered for filing a refund report for power sales transactions between LG&E and Southern Company Services under LG&E's Rate Schedule GSS.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Washington Water Power

[Docket Nos. ER97–4630–001 and ER97–4707–001]

Take notice that on November 17, 1997, Washington Water Power, tendered for reporting with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.19a, Refund Calculations and Customer Transmittal letters for Tenaska Power Services Co. and Tillamook People's Utility District as ordered by the Commission, by letter dated November 6, 1997, pursuant to WWP's failure to file Service Agreements within 30 days after service commenced.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services Inc.

[Docket No. ER98–3–000]

Take notice that on November 5, 1997, Cinergy Services Inc., tendered for filing an amendment in the above-referenced docket.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Company

[Docket No. ER98–365–000]

Take notice that on October 29, 1997, New England Power Company filed a Service Agreements and Certificates of Concurrence with PacifiCorp Power Marketing, Inc., under NEP's FERC Electric Tariff, Original Volumes No. 5 and 6.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Company

[Docket No. ER98–366–000]

Take notice that on October 29, 1997, New England Power Company filed a Service Agreement and Certificates of Concurrence with Wheeled Electric Power Company, under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER98–525–000]

Take notice that on November 3, 1997, Arizona Public Service Company (the Company), tendered for filing an informational report on refunds of over billed amounts to wholesale customers through the Company's FERC Fuel Adjustment Clause.

Copies of this filing have been served upon the affected parties as follows:

Customer Name and APS/FPC/FERC Rate Schedule

Electrical District No. 3 (ED–3), 12
Tohono O'odham Utility Authority [1] (TOUA), 52
Wellton-Mohawk Irrigation and Drainage District (Wellton-Mohawk), 58
Arizona Power Authority (APA), 59
Colorado River Indiana Irrigation Project [2] (CRIIP), 65
Electrical District No. 1 (ED–1), 68
Town of Wickenburg (Wickenburg), 74
Southern California Edison Company (SCE), 120
Electrical District No. 6 (ED–6), 126
Electrical District No. 7 (ED–7), 128
Electrical District No. 8 (ED–8), 140
Aquila Irrigation District (AID), 141
McMullen Valley Water Conservation and Drainage District (MVD), 142
Tonopah Irrigation District (TID), 143
Citizens Utilities Company (Citizens) [2], 149
Harquahala Valley Power District (HVPD), 153
Buckeye Water Conservation and Drainage District (Buckeye), 155
Roosevelt Irrigation District (RID), 158
Maricopa County Municipal Water Conservation District (MCMWCD), 168
City of Williams (Williams), 192
San Carlos Indiana Irrigation Project (SCIP), 201
Maricopa County Municipal Water Conservation District at Lake Pleasant (MCMWCD-Lk.Pl.), 209
The California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER98–579–000]

Take notice that on November 7, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Louisville Gas and Electric Company (LG&E).

Cinergy and LG&E are requesting an effective date of October 15, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. The Cincinnati Gas & Electric Company and PSI Energy, Inc

[Docket No. ER98–580–000]

Take notice that on November 6, 1997, The Cincinnati Gas & Electric Company (''CG&E'') and PSI Energy, Inc. (''PSI''), (hereinafter collectively referred to as ''Cinergy Operating Companies''), tendered for filing pursuant to the Commission's November 15, 1996 Order issued in Docket Nos. ER96–2504–000 and ER96–2506–000 approving, among other things, Cinergy's market-based rate Power Sales Tariff, FERC Electric Tariff, First Revised Volume No. 4, Cinergy's revised quarterly transaction report for the calendar quarter ending September 30, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

[1] Formerly Papago Utility Tribal Authority.

[2] APA–FPC/FERC Rate Schedule in effect during the refund period.

21. Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER98–581–000]

Take notice that on November 7, 1997, Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company tendered for filing Notices of Cancellation of the Ohio Edison System Open Access Tariff and the Centerior Energy Open Access Tariff effective midnight January 6, 1998. These Open Access Tariffs will be superseded by the FirstEnergy Open Access Tariff, which became effective upon consummation of the merger of the four operating companies named above, at 12:01 A.M., November 8, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Company

[Docket No. ER98–583–000]

Take notice that on November 7, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Avista Energy, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company

[Docket No. ER98–584–000]

Take notice that on November 7, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Williams Energy Services Company under LG&E's Open Access Transmission Tariff.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Central Vermont Public Service Corporation

[Docket No. ER98–585–000]

Take notice that on November 7, 1997, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Cinergy Services, Inc., as agent for and on behalf of the Cinergy Operating Companies under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power, energy, and/or resold transmission capacity at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on November 7, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER98–586–000]

Take notice that on November 7, 1997, PECO Energy Company (PECO), filed a Service Agreement dated October 21, 1997, with NorAm Energy Management, Inc. (NEM), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds NEM as a customer under the Tariff.

PECO requests an effective date of October 21, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to NEM and to the Pennsylvania Public Utility Commission.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER98–587–000]

Take notice that November 7, 1997, Duquesne Light Company (DLC) filed a Service Agreement dated November 5, 1997, with Western Resources, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Western Resources, Inc., as a customer under the Tariff. DLC requests an effective date of November 5, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Arizona Public Service Company

[Docket No. ER98–588–000]

Take notice that on November 7, 1997, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3 with Central Louisiana Electric Company.

A copy of this filing has been served on the Arizona Corporation Commission and Central Louisiana Electric Company.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Florida Power & Light Company

[Docket No. ER98–590–000]

Take notice that on November 7, 1997, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Williams Energy Services Company for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on December 1, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. Bangor Hydro-Electric Company

[Docket No. ER98–591–000]

Take notice that on November 7, 1997, Bangor Hydro-Electric Company filed an executed service agreement for non-firm point-to-point transmission service with the Indeck-Maine L.L.C.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

30. Illinois Power Company

[Docket No. ER98–592–000]

Take notice that on November 7, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which City Water, Light & Power, Springfield, Illinois will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

31. Florida Power & Light Company

[Docket No. ER98–593–000]

Take notice that on November 7, 1997, Florida Power & Light Company (FPL), tendered for filing a proposed notice of cancellation of an umbrella service agreement with Heartland Energy Services 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 March 12, 1997.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

32. UtiliCorp United Inc.

[Docket No. ER98–594–000]

Take notice that on November 7, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with SPS Power Marketing for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

33. UtiliCorp United Inc.

[Docket No. ER98–595–000]

Take notice that on November 7, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with SPS Power Marketing for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

34. UtiliCorp United Inc.

[Docket No. ER98–596–000]

Take notice that on November 7, 1997, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Williams Energy Services Company for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

35. PP&L, Inc.

[Docket No. ER98–597–000]

Take Notice that on November 7, 1997, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (''PP&L''), filed a Service Agreement dated November 5, 1997, with Minnesota Power & Light Company (MP&L) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds MP&L as an eligible customer under the Tariff.

PP&L requests an effective date of November 7, 1997 for the Service Agreement.

PP&L states that copies of this filing have been supplied to MP&L and to the Pennsylvania Public Utility Commission.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

36. Florida Power Corporation

[Docket No. ER98–598–000]

Take notice that on November 7, 1997, Florida Power Corporation (FPC), tendered for filing an amendment to Florida Power Corporation FERC Rate Schedule No. 92, an interchange contract for the provision of interchange service between itself and the City of Lakeland. As proposed, the amendment would add a service schedule to that interchange contract to provide for service under Schedule OS, Opportunity Sales. FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on November 8, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

37. Florida Power Corporation

[Docket No. ER98–599–000]

Take notice that on November 7, 1997, Florida Power Corporation (FPC), tendered for filing a contract for the provision of interchange service between itself and NP Energy Inc. The contract provides for service under Schedule J, Negotiated Interchange Service, Schedule OS, Opportunity Sales, and Schedule S, NP Energy Inc., FERC Electric Schedule No. 1. FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on November 8, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

38. Kansas City Power & Light Co.

[Docket No. ER98–600–000]

Take notice that on November 7, 1997, Kansas City Power & Light Company (KCPL), tendered for filing its quarterly report transactions under its Generation Sales Tariff which matches the information required in *Southern Company Services, Inc.*, 75 FERC ¶ 61,130 (1996).

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

39. Indiana Michigan Power Company

[Docket No. ER98–601–000]

Take notice that on November 6, 1997, Indiana Michigan Power Company (I&M) submitted for filing a Facility Interconnection and Operation Agreement between I&M, on the one hand, and an alliance consisting of Southern Indiana Gas & Electric Company, Hoosier Energy Rural Electric Cooperative, Inc. and Southern Indiana Rural Electric Cooperative, Inc. (the Alliance), on the other.

I&M requests an effective date of March 1, 1998.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

40. New England Power Pool

[Docket No. ER98–602–000]

Take notice that on November 6, 1997, the New England Power Pool (NEPOOL), Executive Committee filed a Service Agreement for Through or Out Service or Other Point-to-Point Transmission Service pursuant to section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of this Service Agreement will permit NEPOOL to provide transmission service to Maine Public Service Company in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented, under the above-referenced dockets. NEPOOL requests a retroactive effective date of October 6, 1997, for commencement of transmission service. Copies of this filing were served upon all persons on the Commission's official service lists in the captioned proceedings, the NEPOOL members, the New England Public Utility Commissioners and all parties to the transactions.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

41. Duquesne Light Company

[Docket No. ER98–604–000]

Take notice that on November 10, 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 November 1, 1997, with Horizon Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Horizon Energy as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

42. Duquesne Light Company

[Docket No. ER98–605–000]

Take notice that on November 10, 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 November 1, 1997, with QST Energy, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds QST Energy, Inc., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

43. Duquesne Light Company

[Docket No. ER98–606–000]

Take notice that on November 10, 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 November 1, 1997, with Allegheny Energy Solutions, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Allegheny Energy Solutions, Inc., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

44. Duquesne Light Company

[Docket No. ER98–607–000]

Take notice that on November 10, 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 November 1, 1997, with CMS Marketing, Services and Trading Co., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds CMS Marketing, Services and Trading Co., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

45. Duquesne Light Company

[Docket No. ER98–608–000]

Take notice that on November 10, 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 November 1, 1997, with NEV East, L.L.C., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds NEV East, L.L.C., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

46. West Texas Utilities Company

[Docket No. ER98–609–000]

Take notice that on November 10, 1997, West Texas Utilities Company (WTU) submitted for filing (1) a Wholesale Power Choice Tariff (WPC Tariff), (2) executed service agreements under the WPC Tariff with the following: Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Golden Spread Electric Cooperative, Inc., Kimble Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., Midwest Electric Cooperative, Inc., Rio Grande Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., Stamford Electric Cooperative, Inc., and Taylor Electric Cooperative, Inc., (the WPC Customers); and (3) executed Agreements Concerning Implementation of Wholesale Power Choice Tariff between WTU and each of the WPC Customers.

WTU requests an effective date of January 1, 1997, for the WPC Tariff and the related service agreements and Implementation Agreements and, accordingly, requests waiver of the Commission's notice requirements. Copies of this filing have been served on each of the ten customers and the Public Utility Commission of Texas.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

47. Kansas City Power & Light Company

[Docket No. ER98–611–000]

Take notice that on November 10, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 9, 1997, between KCPL and Avista Energy, Inc., KCPL proposes an effective date of October 24, 1997, and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

48. Kansas City Power & Light Company

[Docket No. ER98–612–000]

Take notice that on November 10, 1997, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 16, 1997, between KCPL and Florida Power Corp. KCPL proposes an effective date of October 24, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

49. Cinergy Services, Inc.

[Docket No. ER98–613–000]

Take notice that on November 10, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and DTE Energy Trading (DTE).

Cinergy and DTE are requesting an effective date of October 21, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

50. Cinergy Services, Inc.

[Docket No. ER98–614–000]

Take notice that on November 10, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and DTE Energy Trading (DTE).

Cinergy and DTE are requesting an effective date of October 21, 1997.

Comment date: December 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

51. UtiliCorp United, Inc.

[Docket No. ES98–7–000]

Take notice that on November 12, 1997, UtiliCorp United, Inc., filed an Application under Section 204 of the Federal Power Act for authorization to enter into corporate guarantees in the amount of not more than $150,000,000

in support of debt securities to be issued by UtiliCorp South Pacific.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

52. Chicago Housing Authority

[Docket No. TX98–1–000]

On November 14, 1997, the Chicago Housing Authority (CHA) filed with the Federal Energy Regulatory Commission (Commission) an application requesting that the Commission order Commonwealth Edison Company (ComEd) to provide transmission services pursuant to Section 211 of the Federal Power Act.

CHA requested firm network transmission service commencing on the later of 30 days after issuance of a Commission order or upon termination of CHA's purchase of electricity from ComEd pursuant to notice to be provided to ComEd by CHA. CHA requested that the Commission find that CHA is an eligible customer pursuant to ComEd's Open Access Transmission Tariff.

Comment date: December 23, 1997, in accordance with Standard Paragraph E at the end of this notice.

53. Old Dominion Electric Cooperative

[Docket No. ES98–11–000]

Take notice that on November 20, 1997, Old Dominion Electric Cooperative tendered an Application under Section 204 of the Federal Power Act for authorization to issue up to $5,675,000 of debt securities.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

54. Maine Electric Power Company

[Docket No. ES98–12–000]

Take notice that on November 20, 1997, Maine Electric Power Company tendered an Application under Section 204 of the Federal Power Act for authorization to issue up to $9,500,000 of Short-term debt securities.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

55. ESEG, Inc.

[Docket No. ES98–13–000 and ES98–13–001]

Take notice that on November 20, and November 25, 1997, ESEG, Inc. tendered an Application and an amendment thereto under Section 204 of the Federal Power Act for authorization to issue up to $4,000,000 of long-term debt securities.

Comment date: December 22, 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. 97–31757 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–92–001]

Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Mobile Bay Extension and Expansion Project

November 28, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed gas pipeline facilities including a total of 75.66 miles of pipeline and 30,000 horsepower (hp) of compression:

- 19.08 miles of 30-inch-diameter pipeline from existing compressor station 82 in Mobile County, Alabama to a new offshore connection platform in Mobile Block 822 (this segment involves approximately 4.00 miles of onshore pipeline);
- 56.58 miles of 24-inch-diameter pipeline from the new offshore connection platform in Mobile Block 822 to a new platform in Main Pass Viosca Knoll Block 261;
- 15,000 hp of additional compression at compressor station 82; and
- 15,000 hp of compression at a new compressor station 83 in Mobile County, Alabama.

The purpose of the proposed facilities would be to provide about 350,000 thousand cubic feet per day (Mcfd) of gas on the offshore facilities and 264,000 Mcfd on the onshore portion.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP97–92–001; and
- Mail your comments so that they will be received in Washington, DC on or before December 29, 1997.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation

should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31758 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–331–000]

Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Cherokee Expansion Project

November 28, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA addresses the potential environmental effects of the construction and operation of the following facilities:

- construction of about 11.2 miles of 48-inch-diameter natural gas pipeline loop (Alabama Mainline Loop) in Marengo County, Alabama;
- uprating of the 16-inch-diameter Georgia Extension (Georgia Extension Uprating) in Walton and Gwinnett Counties, Georgia from a maximum allowable operating pressure (MAOP) of 780 pounds per square inch (psi) to a MAOP of 960 psi. The uprating would include:

a. replacement of about 3.7 miles of 16-inch-diameter pipeline;

b. expansion and/or uprating of four metering and regulating (M&R) stations;

c. hydrostatic testing of about 26.9 miles of 16-inch-diameter pipeline; and

d. abandonment in place of about 0.1 mile of 16-inch-diameter pipeline.

- construction of a new 15,000 horsepower (HP) compressor station in Coweta County, Georgia (Compressor Station 115);
- installation of two 4,000-HP compressor units at an existing compressor station in Walton County, Georgia (Compressor Station 125);
- rewheeling compressor units at existing compressor stations in Chilton County, Alabama (Compressor Station 100) and in Henry County, Ceorgia (Compressor Station 120); and
- installation of additional gas cooling capacity at an existing compressor station in Randolph County, Alabama (Compressor Station 110).

The purpose of the proposed facilities is to provide additional firm transportation capacity of up to 87,070 dekatherms per day of natural gas to two existing customers.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, D.C. 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch II, PR–11.2;
- Reference Docket No. CP97–331–000; and
- Mail your comments so that they will be received in Washington, DC on or before December 29, 1997.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31767 Filed 12–3–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5931–9]

Models-2000 Workshop; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

The Ecosystems Research Division of the National Exposure Research Laboratory of the U.S. Environmental Protection Agency is hosting a workshop on the development and use of computer models in risk assessment, including both dose-response and exposure modeling. The workshop will be held at the EPA Ecosystems Research Division, 960 College Station Rd. in Athens, GA from December 15–17, 1997, convening no earlier than 8:30 a.m. and adjourning no later than 6:00 p.m. For further information, contact Dr. Rosemarie Russo, Director of EPA's Ecosystems Research Division at (706) 355–8001 (russo.rosemarie@epamail.epa.gov).

Background

In March 1994, the Deputy Administrator endorsed the recommendations of the *ad hoc* Agency Task Force on Environmental Regulatory Modeling (ATFERM) that were designed to improve the procedures by which the Agency adopts and utilizes computer models in generating risk assessments. Following subsequent discussion in the Science Policy Council Steering Committee, the senior science policy body in the Agency, and in correspondence between the Agency's Science Advisory Board (SAB) Chair and the Administrator, a further effort is being undertaken to (a) facilitate Agency adherence to existing guidance on modeling and (b) define and implement improvements to the way in which the Agency develops and uses modeling. A key aspect of this new effort is the convening of a workshop, aimed primarily at Agency modelers and risk assessors.

The intended goal of the workshop is to recommend to the Science Policy Council (SPC) and the Administrator/Deputy Administrator of EPA a Models Implementation and Improvement Plan

for enhancing modeling within EPA. The Plan is likely to include the following: model development and application, peer review and quality assurance/control, training, technical support, applications acceptability criteria, and identification and penetration of barriers to improved use of models within EPA.

The Agency will convene experts in a workshop format to critically review existing EPA and other appropriate guidance, policies and procedures, plus recent analyses of associated problems, such as the ATFERM report. The aim is to improve adherence to existing policies; identify needed guidance changes (additions or deletions) to those policies; identify barriers to effective implementation of policies; and recommend actions to overcome these barriers (e.g., training in model use, organizing a standing model users support group).

The workshop is designed primarily for EPA scientists. Some outside scientists are being invited to attend, including some who may have been members of past Science Advisory Board panels. They will be participating as individuals, not as SAB members, and the SAB will not be making any advice on the basis of this meeting. There is some limited space for observers from the public.

Robert R. Swank, Jr.,

Acting Director, Ecosystems Research Division, Athens, GA.

[FR Doc. 97–31793 Filed 12–3–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER NUMBER: 97–31384.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, December 4, 1997, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Establishment of Filing Requirements for the Pennsylvania Special Election in the 1st Congressional District.

* * * * *

DATE AND TIME: Tuesday, December 9, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437G.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, December 11, 1997 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Election of Officers.

Future Meeting Dates.

Advisory Opinion 1997–21: Firebaugh for Congress Committee by counsel, Judith Corley. (Reconsideration of issued opinion on use of campaign funds to restore candidate's funds used to pay bank loan owed by her committee.)

Administrative Matters.

Service pins.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 97–31900 Filed 12–2–97; 11:58 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 18, 1997.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Betty Lou Johnson Trust, Betty Lou Johnson, Trustee, Winthrop, Minnesota; and Mark L. Johnson, Dassel, Minnesota to acquire voting shares of Winthrop Bancshares, Inc., Winthrop, Minnesota, and thereby indirectly acquire Winthrop State Bank, Winthrop, Minnesota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

2. Fred C. and Kellie P. Harlan, Okmulgee, Oklahoma; to acquire voting shares of First Okmulgee Corporation, Okmulgee, Oklahoma, and thereby indirectly acquire First National Bank & Trust Company, Okmulgee, Oklahoma.

Board of Governors of the Federal Reserve System, November 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31745 Filed 12-3-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than December 29, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102–2034:

1. National Commerce Bancorporation, and National Commerce Community Bancorp, Inc., a wholly owned subsidiary of National Commerce Bancorporation, both of Memphis Tennessee; to acquire 100 percent of the voting shares of Bancshares of West Memphis, Inc., West Memphis, Arkansas, and thereby indirectly acquire Bank of West Memphis, Inc., West Memphis, Arkansas. National Commerce Community Bancorp, Inc., also has applied to become a bank holding company.

2. National Commerce Bancorporation, and National Commerce Community Bancorp, Inc., a wholly owned subsidiary bank holding company of National Commerce Bancorporation, both of Memphis, Tennessee; to acquire 100 percent of the voting shares of First Citizens Bancshares Company, Marion, Arkansas, and thereby indirectly acquire Citizens' Bank, Marion, Arkansas. National Commerce Community Bancorp, Inc., also has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, November 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31744 Filed 12–3–97; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Broker and Direct Move Management Services Provider Participation in the General Services Administration's Centralized Household Goods Traffic Management Program (CHAMP)

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of proposed program changes for comment.

SUMMARY: Earlier this year, GSA provided the household goods transportation industry an opportunity to comment on its draft 1997 Household Goods Tender of Service (HTOS). GSA has received and reviewed the industry's comments on the draft 1997 HTOS and is in the process of making appropriate revisions to the document before issuing it in final. The provisions contained in this notice apply to household goods transportation broker and direct move management services provider participants in CHAMP and were not included in the original draft HTOS. We are offering these provisions for industry review and comment at this time.

DATES: Please submit your comments by January 5, 1998.

ADDRESSES: Mail comments to the Travel and Transportation Management Staff (FBX), General Services Administration, Washington, DC 20406, Attn: **Federal Register** Notice. GSA will consider your comments in developing the final move management services provisions. In the interim, rates filed in response to GSA's 1996 Request for Offers have been extended for 90 days from October 31, 1997 to January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Tucker, Senior Program Analyst, Travel and Transportation Management Staff, FSS/GSA, 703–305–7660.

Section xx—Move Management Services

Subsection A—General

xx-1. Scope

This section establishes terms and conditions for participation by licensed move management services providers (hereinafter referred to as ''broker'') and direct move management services providers in the General Services Administration's (GSA's) Centralized Household Goods Traffic Management Program (CHAMP).

xx-2. Applicable Provisions

Except as otherwise provided in this section, the provisions of sections 1 through — — of this Household Goods Tender of Service (HTOS), and any amendments thereto, apply both to brokers and direct move management services providers covered under this section and to the transportation services furnished by them.

xx-3. Definition of Services

CHAMP offers Federal agencies the following two kinds of services:

A. *Transportation services.* Transportation services are the transportation and accessorial services normally associated with a household goods move as set out in interstate and intrastate tariffs or this HTOS for international moves.

B. *Move management services.* Move management services are those set out in subsection B of this section plus transportation services as defined in paragraph *xx*-3A, above.

xx-4. Move Management Services Provider Treated as Carrier

A. *Use of the term ''carrier''.* The term ''carrier'' as used in sections 1 through—— of this HTOS includes both a broker and a direct move management services provider.

B. *Service performance requirements.* For purposes of participation in CHAMP, a broker or a direct move management services provider must furnish or otherwise comply with all applicable requirements of this HTOS, including services, delivery timeframes, billing, reporting, and liability responsibilities, unless waived by the GBL Issuing Officer or responsible Transportation Officer. A broker must handle any shipment an agency tenders it the same as if it were a carrier. A direct move management services provider must provide the move management services set out in subsection B of this section in conjunction with transportation services; it may not conduct any brokering of shipments under CHAMP.

C. *Other performance requirements.* For purposes of participation in CHAMP, both a broker and a direct move management services provider must file a schedule of their service charges, including carrier transportation rates, and comply with requirements for paying GSA the specified shipment surcharge the same as any other participant in the program. Additionally, both are subject to the Customer Satisfaction Rating system.

D. *Carrier as subcontractor of broker.* Since a broker participating in CHAMP is included in the term ''carrier'' as used in sections 1 through—— of this HTOS, an actual carrier the broker uses to perform transportation under CHAMP is considered to be a subcontractor of the broker.

E. *Issuance of Government bill of lading (GBL) to broker.* When an agency tenders a shipment to a broker, the agency will issue a GBL directly to the broker. The broker is responsible for billing shipment charges in conformity with its filed rates. The broker also is responsible for paying its agents directly for services furnished.

F. *Broker commission.* If a broker has an agreement with a carrier it engages to provide transportation services under CHAMP and the agreement yields a commission, a discount, or anything else of value to the broker, the broker must comply with the following before it may accept the commission, discount, or anything else of value for work performed under CHAMP:

(1) For agreements that yield a commission to the broker, the broker

must propose a single commission rate and a uniform rate structure forming the basis for the commission which it will use with all carriers it selects to perform work under CHAMP. The broker must disclose in writing to GSA its commission rate and structure (describing what the commission represents; e.g., a percentage of full tariff charges) and state that it will use only this rate for work performed under CHAMP;

(2) For agreements that do not specify a commission but yield a discount or anything else of value to the broker, the broker must establish a rate structure with a uniform spread between the rate the Government pays the broker and the rate the broker pays the carrier it uses to perform work under CHAMP. The broker must disclose and fully describe in writing to GSA its uniform rate structure and uniform spread, including the basis (e.g., full tariff charges) for calculations under the rate structure, and must state that it will use only this rate structure and spread for work performed under CHAMP;

(3) A broker must send its disclosure letter to the following address: General Services Administration (6FBX), 1500 E. Bannister Road, Room 1076, Kansas City, MO 64131, Attn: HHG Rate Filing; and

(4) GSA will review the broker's proposed commission rate or uniform rate structure and either approve or reject the broker's arrangement.

xx–5. Restriction on Services Provided

A broker may offer only move management services as described in paragraph *xx*–3B, above. A direct move management services provider may offer move management services only in conjunction with transportation services, as described in paragraph *xx*–3A, above, which it furnishes within its current approved scope of operations.

Subsection B—Move Management Services Provided

xx–100. General

A broker or direct move management services provider is responsible for arranging, coordinating, and monitoring a relocated employee's household goods move from initial notification by the shipping agency through delivery at the new residence. A household goods move within the continental United States is a basic move consisting of one shipment of household goods and personal effects from one or more origins to one or more destinations. The move may include shipment of a privately owned vehicle(s), and a move outside the conterminous United States, including Alaska, may include shipment of unaccompanied air baggage.

xx–101. Carrier Performance Responsibility

Notwithstanding the provisions of paragraph *xx*–11, below, ''Origin and destination on-site quality control,'' the broker or direct move management services provider, as applicable, must ensure that it furnishes transportation services in accordance with the provisions of this HTOS. It also must take necessary and appropriate action to protect the interests of the shipping agency, ensure proper service performance, and protect the real and personal property of the relocating employee. In the event the broker or direct move management services provider is negligent in executing its responsibilities and the shipping agency or relocating employee is adversely affected, the broker or direct move management services provider is liable for damages.

xx–102. Service Performance Audit

The broker or direct move management services provider, as applicable, must audit transportation billings to determine that billed services were necessary to complete the move, properly authorized, and actually performed (this audit is unrelated to an audit of the billing charges). In performing the audit, the broker or direct move management services provider must issue a service performance certification specifying by line item whether the service (including any unauthorized service specifically requested by the relocating employee) was or was not necessary to complete the move, properly authorized, and actually performed. The broker or direct move management services provider may develop its own form for this purpose subject to shipping agency pre-approval when the agency so requests.

xx–103. Employee Counseling

The broker or direct move management services provider, as applicable, must provide employee counseling services including, but not limited to, information on the following: Applicable Federal Travel Regulation (FTR) provisions including employee's household goods transportation and weight allowance entitlement; extra pickup/delivery service; temporary storage-in-transit (SIT) authorized by the shipping agency; non-temporary storage (NTS) for the duration of the assignment; unauthorized items; assembly and disassembly of property; shipment of perishable items; firearms and hazardous materials exclusions; insurance coverage, options, and costs; reporting of concealed damages; employee rights and responsibilities; third-party servicing; packing, unpacking, crating, and uncrating; preparation and filing of claims; responsibility for name and address of origin or destination storage; delivery out of storage; services that will be paid by the shipping agency; services that will be the responsibility of and paid for by the employee even when the GBL Issuing Officer authorizes the service on the GBL for charge back to the employee; moving practices of household goods carriers; carrier's role in the relocation process; and the Government's role in a commuted rate system (Do-it-Yourself) move under the FTR including the limitation on reimbursement to the employee for such a move.

xx–104. Customer Assistance

The broker or direct move management services provider, as applicable, must provide a 24-hour, toll-free, single point of contact(s) by name and telephone number for assistance in resolving any problems that occur during the move, including quality control problems, as well as help in filing a post delivery claim. The broker or provider also must furnish, at no additional cost to the Government, a pocket-sized pamphlet that lists relevant procedures and information useful to the relocating employee.

xx–105. Completion of GSA Form 3080

The broker or direct move management services provider, as applicable, must furnish the relocating employee a GSA Form 3080, Household Goods Carrier Evaluation, for completion of the section entitled ''Relocating Employee's Response'' and instruct the employee to return the form to the shipping agency for completion of the section, ''GBL Issuing Officer's Response.'' Once the shipping agency completes its section, it must return the form to GSA, Traffic Management Branch, 6FBX, 1500 East Bannister Road, Kansas City, MO. 64131.

Within 30 days of delivery of the household goods to the new residence, the broker or direct move management services provider must contact the shipping agency or employee, as appropriate, to ensure the return of Form 3080 to GSA.

xx–106. Claim Preparation, Filing, and Settlement

A. *Organizational involvement.* The broker or direct move management services provider must establish an independent claims section within its

own organization or contract with an independent firm to perform the responsibilities described in paragraph *xx*–106B, below. The term ''independent claims section'' means a section which is independent of the broker's or direct move management services provider's primary claim function and which has personnel assigned specifically to handle Federal agency claims. These personnel may be assigned to perform other duties not related to Federal agency claims. The broker or direct move management services provider, not the Government, is responsible for any costs incurred in establishing an independent claims section within its organization or for contracting with an independent firm to handle GSA claims.

B. *Broker/direct move management services provider responsibilities.* If requested by the relocating employee or the employing agency, the broker or direct move management services provider must:

(1) Provide assistance in the preparation and filing of a claim immediately upon receiving information from the employee that loss or damage occurred during shipment of his/her household goods;

(2) Inform the employee that if he/she discovers additional loss or damage at a later date it will provide additional assistance in preparing and filing additional claims as necessary; and

(3) Counsel the employee in regard to the signing of any full and unconditional releases on any settlement or offer of settlement received before all claims resulting from the move have been resolved.

xx–107. Preparation and Maintenance of Government Bills of Lading (GBL'S)

A. *Optional use of service.* Preparation and maintenance of GBL's as specified in paragraphs *xx*–106 B through G is optional with the shipping agency. If the shipping agency elects to exercise this option, it must complete a written memorandum of understanding (MOU) with the broker or direct move management services provider setting out the terms and conditions, including those required in paragraphs *xx*–106 B through G, applicable to GBL preparation and maintenance. The terms and conditions should specify instructions for completing each block of the GBL.

B. *GBL accountability/responsibility.* The shipping agency ultimately is accountable/responsible for all GBL stock and must issue and obtain a signed receipt, as required by Federal Property Management Regulations 101–41.3024(2) and 101–41.308–1, for any GBL's it issues to the broker or direct move management services provider.

C. *Preparation of GBL forms.* The broker or direct move management services provider must prepare a GBL (Standard Form 1103) or Government Personal Property Bill of Lading (SF 1203) (either hereinafter referred to as GBL) in accordance with its MOU with the shipping agency and instructions published in the GSA Federal Supply Service (FSS) Guide, ''How to Prepare and Process U.S. Government Bills of Lading,'' National Stock Number, 7610–00–682–6740, FPMR 101–41.305–1. A separate GBL must be prepared for each authorized shipment of a privately owned vehicle(s) or unaccompanied air baggage (UAB). Since ultimate responsibility and accountability for GBL's remains with the shipping agency and its GBL Issuing Officer, the name and address of the issuing office and GBL Issuing Officer, not that of the preparer, must appear on the GBL. Distribution of the completed GBL must be in accordance with the above referenced FSS guide and FPMR 101–41.302–2. The broker or direct move management services provider must give the shipping agency issuing officer a legible memorandum copy of each GBL it has prepared and distributed before the pickup date of the shipment.

D. *Maintenance of GBL forms.* The broker or direct move management services provider is accountable for all blank GBL's provided by the shipping agency and must:

(1) Keep them in a locked container at all times;

(2) Maintain a GBL register for all GBL's it prepares showing the date of issuance and the employee for whose shipment it was issued; and

(3) Make the register available for review at any time upon request by the GBL Issuing Officer or his/her designee.

E. *Amendments to original GBL.* If a GBL must be amended after distribution, the broker or move management services provider must complete a GBL Correction Notice (Standard Form 1200). Only the GBL Issuing Officer may sign the SF 1200 and must return the signed form to the broker or move management services provider for the same distribution as the original GBL.

F. *Lost GBL's.* If the original copy of an issued GBL is lost, the broker or direct move management services provider must notify the GBL Issuing Officer and prepare a certification in accordance with FPMR 101–41.307 for forwarding to the GBL Issuing Officer for signature. Only the GBL Issuing Officer may sign (certify) a true memorandum copy of an issued GBL for use instead of the original SF 1103 for billing purposes.

G. *Damaged GBL's.* A GBL that is damaged in preparation, prepared for issuance but not used, or unusable for any other reason must be marked ''canceled'' on all copies and returned to the GBL Issuing Officer. The GBL Issuing Officer must sign a receipt for any canceled, damaged, or otherwise unusable GBL returned to him/her. The GBL Issuing Officer is responsible for disposing of any unused, obsolete, or canceled GBL's in accordance with General Records Schedule 9, Travel and Transportation Records, 36 CFR Chapter XII, § 1228.22.

xx–108. Data Communications Capabilities

The broker or direct move management services provider must be able to electronically transmit task orders and messages, and must provide on-line access to its database as follows:

A. *Accessibility.* The GBL Issuing Officer or his/her designee and the GSA Program Management Office (PMO) must have on-line access to all database information pertaining to task orders and shipment records applying to all accounts established under the terms of this HTOS. The broker or direct move management services provider must establish sufficient safeguards to prevent unauthorized access to the database, and furnish clearly documented procedures for access and use of the database. Electronic access must be available through an asynchronous modem with a baud rate of at least 2400.

B. *Database elements.* The database must contain, at a minimum, task order and shipment information sufficient to generate the reports specified in paragraph *xx*-113. Shipment information must be maintained in a separate directory with a separate record for each employee move. Shipment files for HTOS shipments must not be commingled with non-HTOS shipment files. Each shipment record must contain all information required for that particular shipment, including information relevant to any claim filed with the carrier, status of the claim, etc.(made available on a continuous computer terminal screen when necessary). Performance data reflecting the handling of the move must be independently collected and maintained in this file. The broker or direct move management services provider must be able to extract and consolidate data, such as carrier performance information, for any specific report that may be required.

C. *Database maintenance.* The database must be updated at a minimum every 24 hours. The broker or direct move management services provider must maintain on-line access to database elements for each shipment for a period of one year from the date of pickup. For record retention requirements after one year, see 48 CFR 4.7.

xx–109. Identification of, and Authorization for, Special Services

A. *Identification of special services.* The broker or direct move management services provider must identify all services that may be needed in connection with the shipment of a particular relocated employee's household goods, including but not limited to shuttle service, special crating, third party servicing, elevator charges, long carry, and or stair carries. The broker or direct move management services provider must provide this information to the GBL Issuing Officer and obtain any written waivers or authorizations that may be required under the HTOS.

B. *Authorization for special services.* The broker or direct move management services provider must obtain written pre-authorization from the GBL Issuing Officer prior to authorizing special services on the GBL, such as shuttle service, telephone pre-move survey, SIT at origin, custom-built crating, third party servicing, hoisting and lifting, disassembly of waterbeds and German shrunks (large cabinets which require disassembly to move), pickup and delivery on Saturday, Sunday, or holidays, reweighs, etc. All written authorizations and waivers must be maintained in the shipment file. The broker or direct move management services provider must specify all requested services on the GBL, both those that are authorized and will be paid as an entitlement of the employee and those that are advanced and will be charged back to the employee. The employee must be counseled about charges for any service that will be advanced and charged back to the employee before the service is performed. A generic form may be developed for this purpose, and any service shown on the form that is not applicable to a particular shipment must be ''crossed out'' or marked ''none'' or ''not applicable'' prior to submitting the form to the GBL Issuing Officer for written authorization/approval.

xx–110. Origin and Destination On-Site Quality Control

A. *Optional use of this service.* Origin and destination on-site quality control services as specified in this paragraph *xx*–110 are optional with the shipping agency. If the shipping agency elects to exercise this option, the actual cost of the service to be performed is negotiable between the broker or direct move management services provider and the shipping agency. The agreed upon price for the service to be performed must be in writing and retained by both parties. The written agreement shall be construed as a one-time only amendment to the broker's/direct move management services provider's rate filing and a copy of the agreement must be included in its voucher for payment.

B. *Origin services on-site quality control.* If the shipping agency requests, quality control personnel must provide on-site inspection service at the origin residence on the packing and loading dates. Such service must include at a minimum verification of: Correct inventory coding; the use of proper packing, crating, and wrapping materials and techniques; equipment and personnel suitability; appropriate article servicing and disassembly; and appropriate protection for the residence and adjacent real property. The broker/direct move management services provider must make a pre-visit telephone call to confirm the availability of the transferee.

C. *Destination services on-site quality control.* If the shipping agency requests, quality control personnel must provide on-site inspection service at the destination residence at the time of delivery. Such service must include at a minimum verification of: The inventory coding; satisfactory performance of the unpacking service; equipment and personnel suitability; appropriate article servicing and re-assembly; and appropriate protection for the residence and adjacent real property.

D. *Firms authorized to perform origin and destination on-site quality control.*

(1) *Broker.* A broker may engage another firm to perform these services, including but not limited to a household goods carrier or freight forwarder or representative, employee, or agent thereof.

(2) *Direct move management services provider.* A direct move management services provider may engage another firm to perform these services, provided that such other firm must be a household goods carrier or freight forwarder or representative, employee, or agent thereof.

xx–111. Storage-In-Transit (SIT)

A. *Placement in SIT.* When storage-in-transit (SIT) is authorized the shipment will be placed into SIT in accordance with all applicable provisions of this HTOS. The broker/direct move management services provider must carefully counsel the employee in regard to the duration of storage authorized. It must notify the employee of the actual location of the SIT, including the storage company's telephone number, within five calendar days of delivery of the shipment into SIT.

B. *Monitoring shipments in SIT.* The broker or direct move management services provider must monitor shipments that have been placed in SIT and notify the employee and the shipping agency destination facility representative in writing, at least ten working days before the expiration of any authorized period of SIT, of the impending SIT expiration. Further, it must counsel the employee that upon expiration of the authorized SIT period, the Government no longer will be liable for storage charges, and request disposition of the household goods, in writing, from the shipping agency destination facility representative and the employee.

C. *Storage in excess of 180 days.* In cases when an employee's household goods remain in temporary storage in excess of the maximum 180-day SIT period, the broker or direct move management services provider must at the end of the 180-day period ascertain the condition of the property to protect both the Government's and the relocating employee's right to recovery for losses or damages for which the carrier is responsible. The broker or direct move management services provider is responsible for arranging delivery of the property from storage to the residence in accordance with the shipping agency destination facility representative's instructions. Payment of storage for any period in excess of the 180-day maximum is the employee's responsibility.

xx–112. Quality Assurance Plan

If the shipping agency requests, the broker or direct move management services provider must provide the agency with a quality assurance plan and designate quality assurance personnel to assist in ensuring quality service is provided. *xx*–113. Management Reports.

If the shipping agency requests, the broker or direct move management services provider must furnish on a timely basis the management reports specified in paragraphs *xx*–113 A through F, below. The format, content, and frequency of the reports will be established in accordance with the shipping agency's requirements. The

broker or direct move management services provider may be required to provide special or one-time reports to the shipping agency upon written approval of the GSA Program Management Office.

A. *Shipment summary report.* A report presenting a summary of shipments including the total number of shipments, the number of shipments by agency organization, number of shipments by carrier including line-haul carrier, number of interstate shipments, number of intrastate shipments, number of international shipments, total line haul costs, and total accessorial service costs.

B. *Claims summary report.* A report presenting a summary of claims including claims frequency, number of claims by agency organization, number of claims by carrier, number of interstate claims, number of intrastate claims, number of international claims, average number of days between the date of claim filing and the date of issuance of the initial settlement offer, average number of days between the date of receipt of the initial settlement offer and the date of final settlement, average amount claimed and settled interstate, average amount claimed and settled intrastate, and the average amount claimed and settled international. For each claim that is not settled within 30 days (or 60 days when approved by the shipping agency's GBL Issuing Officer or responsible Transportation Officer) an explanation for the delay must be provided using the delay codes specified in section 9 of this HTOS.

C. *Counseling contact summary report.* A monthly summary report of employee counseling contacts showing employee names, date of initial contact, and current status of the shipment including the date of the pre-move survey, packing date, shipment pickup date, and proposed delivery date into SIT and/or the residence.

D. *On-time services summary report.* A monthly summary report listing employee names, each employee's scheduled pick up date, actual pick up date, scheduled delivery date into SIT and/or the residence, actual delivery date into SIT and/or the residence, scheduled date for delivery out of SIT, and the actual delivery date out of SIT. When scheduled and actual dates are not the same, an explanation must be provided.

E. *Billing accuracy summary report.* A monthly summary report of billing accuracy showing the number of transportation bills submitted and the number returned for correction. An explanation of the correction must be provided.

F. *Special or one-time report.* A specially requested report approved by the GSA Program Management Office and provided to the GBL Issuing Officer or the Responsible Transportation Officer.

xx–114. User Agency and Applicant Responsibilities–Memorandum of Understanding

The applicant and each Federal agency desiring to use move management services pursuant to this HTOS shall, prior to the commencement of service, enter into a Memorandum of Understanding (MOU). The MOU shall include, but not be limited to, a description of services the agency requires, carrier selection criteria, service performance auditing instructions, non-temporary storage delivery instruction information, names of agency personnel who will have authority to order move management services, and management report requirements. Both parties must sign the MOU and send a copy for approval to the address contained in paragraph *xx*–202B of subsection C of this section. The agency reserves the right to specify the form, format, and minimum requirements of the MOU.

Subsection C—Participation

xx–200. General

The provisions in section 2 of this HTOS do not apply to brokers or direct move management services providers. The provisions contained in this section apply instead.

xx–201. Participation

A. *Broker.* Participation in the Move Management Services Program under CHAMP is open to any broker holding a household goods brokers license from the U.S. Department of Transportation (or its predecessor, the Interstate Commerce Commission (ICC)), the Federal Maritime Commission (FMC), or a state regulatory authority.

B. *Direct move management services provider.* Participation in the Move Management Services Program under CHAMP is open to any direct move management services provider that is currently approved to participate in CHAMP and that has an approved assigned scope of operations.

xx–202. Application to Participate

A. *General.* Except as provided in paragraphs *xx*–204 B and C of this subsection, and subject to the restrictions in paragraph *xx*–207 of this subsection, any broker or direct move management services provider desiring to participate in the program must request approval to participate (see section 2–2 of this HTOS for information on when to submit application for approval to participate).

B. *Request to participate.* A request to participate must be sent on company letterhead to the following address: General Services Administration, Federal Supply Service Bureau, Traffic & Travel Services (6FBX), 1500 East Bannister Road, Kansas City, MO 64131–3088. (hereinafter referred to in this subsection C as Program Management Office (PMO))

xx–203. Application Requirements

A broker or direct move management services provider that wishes to participate in the program must submit an application in its own name to be considered for approval to participate. A broker or direct move management services provider (hereinafter referred to in this subsection as ''applicant'' unless more specifically stated) may be subject to punishment by fine, imprisonment, or both (see U.S. Code, title 18, section 1001)if it: (a) Falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (b) makes a false, fictitious, or fraudulent statement or representation; or (c) makes or uses a false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry on any part of the application or on any document furnished pursuant to this HTOS. To be considered for approval, the applicant must meet the following requirements:

A. *Agreement to abide by this HTOS.* The applicant must agree to abide by the terms and conditions of this HTOS, and any amendments thereto.

B. *Operating authority.* The applicant must hold in its own name from an appropriate regulatory body(ies) all necessary operating authorities, permits, and business licenses required for the ''brokering'' (applicable only to brokers) or ''furnishing'' (applicable only to direct move management services providers) of transportation of personal property. The applicant must provide a copy of each authority, permit, or business license to the PMO upon demand, or provide proof that it is exempt from such regulatory certification by operation of law or order of an appropriate regulatory body and state that in addition to tariff and legal requirements it agrees to abide by provisions of this HTOS

C. *Broker applicant's agents.* A broker applicant by agreeing to abide by the terms and conditions of this HTOS certifies that it will use only those household goods carriers approved to participate in CHAMP to provide transportation services.

D. *Broker applicant's agent agreements.* A broker applicant by agreeing to abide by the terms and conditions of this HTOS certifies that each agent it will use to provide transportation services is at the time of application, or will be at the time of use, party to a valid written agreement with the broker applicant. The agreement must, at a minimum, include the language contained in HTOS paragraph 8.5.26.6.1 and .2 and specify the terms and conditions of the agent's representation of the broker applicant, the services the agent will provide, the terms and method of payment for services rendered, the quality control standards the broker applicant expects including the method of quality measurement, and the terms under which the agreement may be terminated.

E. *SCAC (Standard Provider Alpha Code) Designation/Taxpayer Identification Number.* The applicant must have a valid SCAC issued by the National Motor Freight Association, Washington, DC and a valid Taxpayer Identification Number.

F. *Trading partner agreement.* The applicant must complete and sign the Trading Partner Agreement (TPA) that accompanies the application and send it back in hard copy along with all other required documentation. If applying to handle both domestic and international shipments, the applicant need complete only one TPA. GSA will not process an applicant's request without the TPA.

G. *Broker applicant provision of performance bond.* A broker applicant must maintain a performance bond in accordance with this HTOS. It must renew the bond on the approval anniversary date of each subsequent year it continues to participate in the move management services program. The bond must be in a minimum amount of $20,000 and executed by a surety included on the list contained in Department of Treasury Circular 570, ''Surety Companies Acceptable on Federal Bonds'' (for additional information, see the following Internet address: www.fms.treas.gov/c570.html).

H. *Experience.* The applicant must maintain its operations in a manner consistent with standard industry practices and this HTOS and demonstrate that it will provide an acceptable level of service.

I. *Quality control program.* The applicant must have a documented and published corporate quality control plan that ensures services it will provide equal or exceed the standards of service established under this HTOS. The published plan must fully explain all facets of the applicant's quality control system.

J. *Agent.* The applicant by agreeing to abide by the terms and conditions of this HTOS certifies that each agent it will use has a documented and published corporate quality control plan that ensures services it will provide equal or exceed the standards of service established under this HTOS. The published plan must fully explain all facets of the agent's quality control system.

K. *Financial responsibility.* The applicant must demonstrate that it is financially responsible and has the working capital and other financial, technical, and management resources to perform under this HTOS.

xx–204. Submission Requirements

GSA's approval of a request to participate in the move management services program is contingent on the applicant demonstrating compliance with the provisions of paragraph *xx*–203 of this subsection through the furnishing of documentary evidence required in paragraphs *xx*–204 A through H of this subsection. GSA reserves the right to waive the approval requirements in paragraphs *xx*–204 E and F of this subsection if the applicant has been formally registered as compliant with the International Organization for Standardization Standard 9000 or one of the standards within the 9000 series (referred to hereafter as ISO 9000) by an internationally recognized ISO 9000 registrar. Before GSA will consider waiving the approval requirements, the applicant must provide a certified true copy of its certificate of conformity with ISO 9000.

A. *HTOS certification.* A signed copy of the applicant's HTOS certification sheet entitled ''Request to Participate and Agreement to Abide by the Terms and Conditions of the General Services Administration's Centralized Household Goods Traffic Management Program'' (see paragraph *xx*–203A of this subsection).

B. *SCAC designation/Taxpayer Identification Number.* A letter from the National Motor Freight Association, Washington, DC showing that the applicant has been assigned a SCAC (see paragraph *xx*–203E of this subsection); statement of the applicant's Taxpayer Identification Number.

C. *Brokers license (applicable only to broker applicants).* A copy of a valid brokers license issued by an appropriate regulatory body (see paragraph *xx*–201A of this subsection).

D. *Applicant information.* Information about the applicant such as name, postal address, electronic mail address, telephone and facsimile numbers, corporate office, and operating authorities. The applicant must indicate whether it is under the financial or administrative control (as addressed in this subsection C) of any carrier, forwarder, or other provider of household goods services and state the name of the controlling carrier, forwarder, or other provider. Additionally, the applicant must provide a listing of any carrier(s), forwarder(s), and/or other provider(s) of household goods services under its financial or administrative control.

E. *Quality control program.* A copy of the applicant's published internal quality control program covering the functions of traffic management (carrier selection, employee counseling, routing, tracing, and billing), packing/packaging/containerizing, employee training, supervision, and if appropriate, agent supervision including quality control goals and objectives showing measurable performance standards, measurement techniques, and plans of action based on the performance standards.

F. *Quality control interface with agents (applicable only to broker applicants).* Information on how the broker applicant applies, and monitors the application of, its quality control program to its designated agents. In addition, the broker applicant must describe how its quality control program relates to and reinforces the quality control programs of its designated agents.

G. *Corporate account trends.* Information concerning the applicant's corporate account activity during the preceding five calendar years.

xx–205. Application Evaluation

GSA will evaluate an applicant's request for approval to participate in the move management services program according to the following criteria:

A. *ISO 9000 registration.* GSA will review each submitted certification to determine its legitimacy and applicability and whether required periodic audits have been performed.

B. *HTOS certification.* GSA will review the HTOS certification to determine whether the applicant has agreed to abide by the terms and conditions of the HTOS.

C. *SCAC designation/Taxpayer Identification Number.* GSA will verify that the National Motor Freight Association, Washington, DC, has issued the applicant a SCAC and that the applicant has provided a Taxpayer Identification Number.

D. *Brokers license (applicable only to broker applicants).* GSA will verify that the broker applicant's brokers license is valid.

E. *Quality control program.* GSA will determine whether the applicant's internal quality control program has been formally published; contains quality control goals and objectives with measurable performance standards, measurement techniques, and plans of action based on the performance standards; and is sufficient to ensure that the applicant's operations, employees, and agents, if appropriate, are familiar with and will be held accountable for achievement of the program's goals and objectives. In evaluating a broker applicant's request, GSA also will determine whether the interface between the applicant's quality control program and the quality control programs of each of its designated agents is such that the programs' goals and objectives and performance standards are relatively consistent and will result in a unified approach to the delivery of quality service.

F. *Performance bond (applies only to broker applicants and only at time of rate filing unless otherwise superseded by specific criteria in the Request for Offers).* Upon receipt of the broker applicant's performance bond from the surety, GSA will verify that the surety company executing the bond appears on the list contained in Department of Treasury Circular 570, ''Surety Companies Acceptable on Federal Bonds,'' and that the amount of the bond is at least $20,000. If the bond is determined to be unacceptable, approval of the broker applicant's rate filing will be subject to compliance with the GSA Request for Offers. *xx*–206. APPROVAL. GSA will approve an applicant's request for participation in the move management services program if it determines that the applicant possesses sufficient qualifications, experience, facilities, quality control processes, and financial capacity to satisfactorily perform under the HTOS.

xx–207. Approval Limitation

A. *Broker applicants.* An approved broker applicant's scope of operations must be the complete coverage of the move management services program. A ''new broker'' is a broker applicant approved during a specific approval window. The designation ''new'' applies from October of the year in which GSA grants approval until October of the following calendar year (for example, an applicant approved in 1997 will be considered ''new'' until October, 1998).

B. *Direct move management services provider applicant.* An approved direct move management services provider applicant's scope of operations must be identical to that of the applicable scope of operations currently in place in CHAMP.

xx–207. Continued Participation

A. *General.* Once an applicant has been approved to participate in the move management services program, continued participation is contingent upon: (1) The participant's showing a willingness and ability to meet the transportation requirements of the United States Government and to comply with all provisions of the HTOS, and (2) the participant's satisfactorily maintaining financial responsibility, working capital, and other financial, technical, and quality control processes and management resources to perform under the HTOS.

B. *Continuation Of ISO 9000 certification.* If an applicant's approval is predicated in part on ISO 9000 certification and the certification lapses or is terminated by the certification registrar, the applicant participant's approval will become conditional. The approval will remain conditional until the participant successfully complies with all requirements waived due to its ISO 9000 certification, provided that if the participant fails to meet evaluation standards, GSA will terminate its approval.

C. *Continuation of performance bond (applicable only to broker participants).* If at any time a broker participant's performance bond is canceled and not replaced with an acceptable new bond, GSA will immediately terminate the broker's participation in the program.

D. *Assignment of rights.* Except for assignment of payment of the broker's or direct move management provider's original bills to a bank for collection, GSA will immediately terminate a broker's or direct move management provider's approval if it exercises any right under a currently existing agreement or enters into an agreement with a party(ies) not subject to its control which in any way infringes, controverts, or otherwise subordinates or prevents it from unilaterally deciding whether it will or will not submit a claim or file suit against the Government or pay a claim made by the Government after Government audit of the original bill for services performed under this HTOS.

E. *Submission of false information.* Willful submission of false information on any document furnished by an applicant or a participating broker or direct move management services provider pursuant to this HTOS is punishable by fines, imprisonment, or both (U.S. Code title 18, section 1001), and may result in denial or termination of approval to participate in the move management services program. Federal user agencies are responsible for selection of a broker or direct move management services provider which best serves its needs and final evaluation of the selected broker's or provider's performance. If it is later discovered that a broker or direct move management services provider was in Common Financial and Administrative Control (CFAC) and did not disclose that fact, GSA will terminate its approval.

Subsection D—Agreement to Abide

xx–300. Acceptance of These Terms and Conditions

A broker or direct move management services provider desiring to participate in the move management services program established under this HTOS section *xx* must, for approval consideration, complete the following statement and return this entire document to the General Services Administration, Centralized Household Goods Traffic Management Program (6FBX), 1500 East Bannister Road, Kansas City, MO 64131:

Request to Participate and Agreement to Abide by the Terms and Conditions of the General Service Administration's Centralized Household Goods Traffic Management Program

By signing below, I, a fully authorized representative of the [indicate one] (broker) or (direct move management services provider), represent that I have read and understand the terms and conditions contained herein and that I for and on behalf of the [indicate one] (broker) or (direct move management services provider) agree to all terms and conditions of the HTOS.

Applicant Name:
Signature and Date:
Printed Name:
Title:
Street Address:
City, State and Zip:
Telephone No.:
Fax No.:
E-mail Address:

VG–13. Cancellation of this agreement.

Except as otherwise provided in this HTOS, this agreement may be canceled by the broker or direct move management services provider, as applicable, or the General Services Administration upon such terms and conditions as are mutually acceptable to the parties.

VG–14. Acceptance by the Government.

Accepted by the General Services Administration:

[Typed name]

Manager, GSA Centralized Household Goods Traffic Management Program

Dated: November 26, 1997.

Janice Sandwen,

Director, Travel and Transportation Management Staff.

[FR Doc. 97–31779 Filed 12–3–97; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a comprehensive conservation plan (CCP) and environmental documents, pursuant to the National Environmental Policy Act and its implementing regulations, for Rachel Carson National Wildlife Refuge, York and Cumberland Counties, Maine; and Great Bay National Wildlife Refuge, Rockingham County, New Hampshire. The Service is furnishing this notice in compliance with Service CCP policy:

(1) to advise other agencies and the public of our intentions, and

(2) to obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: Written comments should be received on or before January 5, 1998.

ADDRESSES: Address comments and requests for more information to one of the following:

Refuge Manager, Rachel Carson National Wildlife Refuge, 321 Port Road, Wells, Maine 04090

Refuge Manager, Great Bay National Wildlife Refuge, 336 Nimble Hill Road, Newington, New Hampshire 03801.

SUPPLEMENTARY INFORMATION: It is U.S. Fish and Wildlife Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection and acquisition, public use, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

The Service will solicit information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will inform people in the general area near each refuge of the time and place of such opportunities for public input to the CCP.

Review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improved Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

We estimate that the draft environmental documents will be available by November, 1998.

Dated: November 24, 1997.

Ronald E. Lambertson,

Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 97–31749 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Lower Sioux Indian Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983). I certify that the Lower Sioux Indian Community of Minnesota Liquor Control Ordinance was duly adopted and certified by Resolution No. 39–97 of the Lower Sioux Indian Community Council on March 25, 1997. The ordinance provides for the regulation, sale possession and use of alcoholic liquor and beer within the Tribe's jurisdiction.

DATES: This ordinance is effective as of December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Cordova, Office of Tribal Services, 1849 C Street, N.W., MS 4641 MIB, Washington, D.C. 20240–4401; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Lower Sioux Indian Community of Minnesota Liquor Ordinance is to read as follows:

Lower Sioux Indian Community in Minnesota

[Resolution No. 39–97]

Be it resolved that the following LIQUOR CONTROL ORDINANCE is hereby adopted by the Lower Sioux Community Council.

I certify that Resolution No. 39–97 was duly adopted by the Lower Sioux Community Council at a meeting held on the 25th day of March , 1997, a quorum being present, by a vote of 4 in favor, 0 opposed, and 0 abstaining.

Betty Lee,

Secretary.

Liquor Control Ordinance; Lower Sioux Indian Community in Minnesota

Section 1. Requirement of License

No person shall sell alcoholic beverages within the Indian Country that lies within the jurisdiction of the Lower Sioux Indian Community, unless such sale meets the requirements of this Ordinance and takes place pursuant to a license issued by the Lower Sioux Community Council under this Ordinance.

Section 2. Definitions

For purposes of this Ordinance, the following terms have the meanings given them.

Subd. 1. ''Alcoholic beverage'' shall mean any beverage containing more than one-half of one percent alcohol by volume.

Subd. 2. ''Community'' shall mean the Lower Sioux Indian Community in Minnesota.

Subd. 3. ''Community Council'' shall mean the Community Council of the Lower Sioux Indian Community in Minnesota.

Subd. 4. ''Community Court'' shall mean the Court of the Lower Sioux Indian Community.

Section 3. Licenses

Subd. 1. On-Sale Licenses. Licenses for the sale of alcoholic beverages for consumption on the premises of sale within the Indian Country that lies within the jurisdiction of the Community may be issued by the Community Council only to an organization wholly owned by the Community, to a subordinate organization of the Community chartered under the provisions of Article V, section (n) of the Community Constitution, or to a person under

contract with the Community or such a subordinate organization.

Subd. 2. Off-Sale Licenses. Not more than two licenses for the sale of alcoholic beverages for consumption off the premises of sale within the Indian Country that lies within the jurisdiction of the Community may be issued by the Community Council; and such licenses, if issued, shall be only to an organization wholly owned by the Community, to a subordinate organization of the Community chartered under the provisions of Article V, section (n) of the Community Constitution, or to a person under contract with the Community or such a subordinate organization.

Section 4. Applications: Required Information

Applications for a license to sell alcoholic beverages under this Ordinance shall be submitted in writing to the Community Council, on a form prepared by the Community Council. The application shall contain the following information:

Subd. 1. Name and Address. The application shall set forth the name and address of the applicant.

Subd. 2. Relationship to Community. The application shall set forth whether the applicant is an organization wholly owned by the Community, a subordinate organization of the Community chartered under the provisions of Article V, section (n) of the Community Constitution, or a person under contract with the Community or such an organization.

Subd. 3. Proposed Location. The application shall describe specifically the land or building where the applicant will sell alcoholic beverages.

Subd. 4. State Law Requirements. The application shall contain an acknowledgment that the applicant conforms to the requirements of the laws of the State of Minnesota as they relate to the obtaining of liquor licenses elsewhere in the State of Minnesota, and that the applicant will conform to the requirements of the State of Minnesota as they relate to transactions involving alcoholic beverages elsewhere in the State of Minnesota.

Subd. 5. Signature. The application shall be dated and signed by the applicant, if the applicant is a natural person, or by the person authorized to legally bind the applicant to compliance with the terms of this Ordinance, if the applicant is an organization, and such signature shall constitute an acknowledgment that the provisions of this Ordinance shall apply to any license issued hereunder.

Section 5. Finding Prerequisite to License Issuance

Licenses for the sale of alcoholic beverages may be issued by the Community Council if the Community Council finds, in its sound discretion, on the basis of the facts disclosed by the application and by such additional information as the Community Council may deem relevant, that such issuance is in the best interests of the Community, and that the licensing requirements of the State of Minnesota have been met by the applicant. The Community Council may reject any application for a license, or for a renewal of a license, if the applicant previously has committed acts which have resulted in the suspension or revocation of a license under this Ordinance or under the laws of the State of Minnesota, or if the Community Council is of the view, in its sound discretion, that granting the application would not be in the best interests of the Community. The Community Council shall state, in writing, its reasons for granting or denying each application.

Section 6. Requirements Contained in Licenses

Licenses for the sale of alcoholic beverages shall contain the following requirements:

Subd. 1. Conformance to Community and State Law. Each license shall require its holder to conform its operations to the laws of the State of Minnesota that relate to the sale or possession of alcoholic beverages, and the continued effectiveness of each license shall be expressly conditioned upon the compliance of its holder with all provisions of this Ordinance and the laws of the State of Minnesota that relate to the sale or possession of alcoholic beverages.

Subd. 2. Terms; Renewals. Each license shall state the term of its effectiveness. No license shall be effective for a term of more than three years from the date of its issuance, and each renewal thereof shall be subject to the same procedures that apply to the initial issuance of a license.

Section 7. Inspection of Premises

The Community Council, and its officers and agents designated in writing for such purposes, shall have the authority, with or without notice, to inspect the premises of any licensee under this Ordinance during normal business hours.

Section 8. Suspension and Revocation—Procedures

The Community Council shall have the authority to suspend or revoke any license issued under this Ordinance, under the following procedures:

Subd. 1. Written Notice to Licensee. Upon receiving information giving the Community Council probable cause to conclude that a licensee under this Ordinance may have violated the terms of the license or applicable law, the Community Council shall give the licensee written notice of the apparent violation and, if the Community Council so determines, that the Community Council intends to suspend or revoke the licensee's license. Such notice shall specify the grounds for the proposed suspension or revocation, and shall be served personally upon the licensee, or sent by certified mail to the licensee, return receipt requested.

Subd. 2. Temporary Emergency Suspension. If, in the judgment of the Community Council, the actions of a licensee pose an immediate threat of irreparable harm to the Community or the public, the Community Council may, by issuing the written notice required by this section, immediately suspend the licensee's license. The written notice shall state the reasons which justify such immediate suspension.

Subd. 3. Right to Request Hearing; Effect of Failure to Request Hearing. Any licensee who receives notice of a proposed suspension or revocation may request a hearing by the Community Council by sending a written request therefor, certified mail, return receipt requested, to the Chairman of the Community Council within seven days of the licensee's receipt of the Community Council's notice. If after receipt of a notice of a proposed suspension or revocation, a licensee fails to timely request a hearing, the Community Council may without a hearing suspend or revoke the licensee's license, and the licensee shall have no right to any further review of such action by the Community Court under Section 9 of this Ordinance.

Subd. 4. Time of Hearing. Upon receipt of a timely request for hearing under this Ordinance, the Community Council shall set a date for a hearing on the revocation or suspension of a license, which date shall be not later than thirty days from the date of the Community Council's receipt of the hearing request, provided that if the license has been the subject of an emergency suspension, the hearing shall be held not later than seven days from the date of the Community Council's receipt of the hearing request.

Subd. 5. Evidence at Hearing. At a hearing held under this Ordinance, the licensee shall be permitted to present evidence with respect to its compliance

with the terms of its license and applicable law. In reaching its decision, the Community Council may consider such evidence, together with all other evidence it deems relevant. Following a hearing, if in the judgment of the Community Council the licensee has not complied with the terms of its license and applicable law, the Community Council shall suspend or revoke its license; and if in the judgment of the Community Council the terms of the license and applicable law have been complied with, the proceedings shall be dismissed. Decisions of the Community Council to suspend or revoke a license, or to dismiss suspension or revocation proceedings, shall be in writing, and shall be subject to review only under the provisions of Section 9 of this Ordinance.

Subd. 6. Suspension or Revocation Sole Community Sanction. Suspension or revocation of a license shall be the sole sanction which the Community Council shall impose for a licensee's noncompliance with this Ordinance. No civil or criminal penalties shall be imposed by the Community Council upon a licensee under this Ordinance.

Section 9. Review of Community Council Decisions

Any person or organization which has applied for a license or a renewal of a license and to which a license has been denied under Section 5 of this Ordinance, and any licensee whose license has been suspended or revoked by the Community Council after a hearing under Section 8 of this Ordinance, may seek review of the decision of the Community Council by filing a civil action in the Community Court within thirty days after the decision is rendered. Such actions shall be heard under the provisions of the Judicial Code of the Community, and the Community herewith waives its sovereign immunity from unconsented suit as to such actions. The jurisdiction of the Community Court to review decisions of the Community Council under this Ordinance shall be exclusive of all other courts.

Subd. 1. Standard of Review. The Community Court shall reverse the decision of the Community Council only if clear and convincing evidence supports the conclusion that the Community Council abused its discretion, or denied the licensee due process or equal protection of the laws in contravention of the Indian Civil Rights Act of 1988, 25 U.S.C. § 1302.

Subd. 2. Effect of Decision Pending Appeal. The decision of the Community Council denying, suspending, or revoking a license shall be effective pending appeal from the decision, unless the Community Court decides, following an evidentiary hearing, that it is highly likely that the appellant will succeed on the merits of the appeal and issues an order accordingly.

Dated: November 19, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–31747 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Isleta Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 97–045, enacting the Liquor Ordinance of the Pueblo of Isleta was duly adopted by the Pueblo of Isleta on July 17, 1997. The Ordinance provides for the regulation of the activities of the regulation, manufacture, distribution, possession, sale, and consumption of liquor on the Pueblo of Isleta lands under the jurisdiction of the Pueblo of Isleta, the provisions for criminal jurisdiction to be exercised in acordance with applicable Federal case law, statutes, and regulations.

DATES: This Ordinance is effective as of December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Division of Tribal Government Services, 1849 C Street, NW., MS 4641–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Liquor Ordinance of the Pueblo of Isleta is to read as follows:

Pueblo of Isleta Liquor Ordinance

Section 1

Introduction

A. *Title.* The title of this ordinance shall be the Liquor Ordinance of the Pueblo of Isleta.

B. *Authority.* This ordinance is being passed and enacted in accordance with the inherent governmental powers of the Pueblo of Isleta, and specifically under Article V, Section 2(e) of the Pueblo of Isleta Constitution. This Ordinance is in conformance with the laws of New Mexico, as required in 18 U.S.C. 1161.

C. *Purpose.* The purpose of this ordinance is to regulate the sale of intoxicating liquor within the exterior boundaries of the Pueblo of Isleta.

Section 2

Definitions

''Governor'' means the Governor of the Pueblo of Isleta or his designee.

''Individuals employed by the Pueblo'' means persons who are tribal employees.

''Intoxicating beverage'' includes the four varieties of liquor commonly referred to as alcohol, spirits, wine, and beer, and all fermented, spiritous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating, and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine, or beer.

''Licensed establishment'' means a physical area of Pueblo of Isleta tribal land designated by the Pueblo of Isleta Tribal Council as a licensed establishment for the purpose of selling intoxicating beverages. Designation by the Tribal Council must show the perimeters of the land and building of the establishment. A map and general description will be required.

''Minor'' means any person under the age of twenty-one (21) years.

''Permittee'' means a person employed by the Pueblo of Isleta and authorized by the Pueblo of Isleta Tribal Council to sell and serve intoxicating beverages, the permit for such designation having been issued pursuant to Section 6 of this Ordinance.

''Pueblo'' means the Pueblo of Isleta, a federally-recognized tribe of Indians, located within the exterior boundaries of the State of New Mexico.

Section 3

General

The sale of intoxicating beverages shall be lawful within the exterior boundaries of the Pueblo of Isleta and all other lands of the Pueblo over which the Pueblo has jurisdiction if such sale is made in conformance with New Mexico state law, if applicable, and authorized by this Ordinance.

Section 4

Location of Sales

All sales of intoxicating beverages must be made at establishments which are wholly owned and operated by the Pueblo and which are duly licensed to engage in such sales by the Pueblo. No licensed establishment shall be located

closer than 500 feet from any church, school, or military installation. A licensed establishment will be specifically designated so as to permit sales either by the package or by the drink.

Section 5

Sales Allowed

Only individuals employed by the Pueblo and specifically authorized by the Pueblo of Isleta Tribal Council may engage in the sale of intoxicating beverages within the exterior boundaries of the Pueblo of Isleta and in accordance with this Ordinance.

Section 6

Permits

Only individuals employed by the Pueblo of Isleta and specifically authorized by the Pueblo of Isleta Tribal Council may sell and serve intoxicating beverages:

A. *Permit Procedure.*

1. Only persons authorized by the Pueblo of Isleta Tribal Council may be duly granted a permit to sell intoxicating beverages.

2. A person applying for a permit must furnish to the Governor and Tribal Council a completed application for a ''Liquor Permit.'' Such application must contain, among other things, the following information:

(a) An exhaustive listing of all jobs, businesses, and other employment for the immediately preceding ten years;

(b) A listing of all residences for the immediately preceding ten years, including street address, city, and state, and dates of residence at each different location;

(c) A list of every liquor license or permit, by number and state, in which the applicant has directly or indirectly owned or had any interest;

(d) Detail with respect to past criminal activity, including conviction for any felony, conviction for any misdemeanors, and conviction for a violation of any federal or state liquor control act in any calendar year, except that traffic offenses need not be listed;

(e) Detail as to whether the applicant ever applied for a liquor license or permit from any governmental entity and was denied and the reasons for any denial.

3. The applicant shall provide two complete sets of fingerprints on a form designated; the costs associated with supplying the complete sets and the investigation thereafter will be borne exclusively by the applicant.

4. The applicant must give his consent that the fingerprints may be processed by local and national law enforcement agencies and all other available agencies. If the search, by virtue of the fingerprint submission, reveals any adverse information which was not shown by the applicant on the application, the applicant will be given an opportunity to explain the circumstance of such omission or challenge the authenticity of the revealed information.

B. *Granting, Denial, Termination or Revocation of Permit.* The granting, denial, termination, or revocation of a permit to an applicant will be within the discretion of the Pueblo of Isleta Tribal Council. The Governor, after reviewing the application and making appropriate inquiry, will make a recommendation to the Tribal Council. The following classes of persons shall be prohibited from being granted a permit to sell or serve intoxicating beverages:

1. Any person convicted of a felony;

2. A minor.

Upon termination of employment with the Pueblo, an individual's authorization shall be revoked as of said employee's termination date.

Revocation of a permit will occur only following an opportunity to be heard.

C. *Licensed Establishments.* Sales of intoxicating beverages will occur only at establishments wholly owned and operated by the Pueblo and duly licensed by the Pueblo. The license for an establishment must show the perimeters of the land and building of the establishment. A map and general description will be required. A parcel of land not containing a building, so long as the perimeters thereof are defined, may be a Licensed Establishment, including but not limited to areas within a golf course.

D. *Prohibited Sales and Practices.*

No permittee shall:

1. Sell, serve, or dispense intoxicating beverages to any person who is obviously intoxicated;

2. Award intoxicating beverages as prizes;

3. Sell intoxicating beverages at a drive-up or walk-up window;

4. Sell intoxicating beverages to a minor who has not attained the age of twenty-one (21);

5. Knowingly sell intoxicating beverages to an adult purchasing such liquor on behalf of a minor or an intoxicated person.

6. Allow a person to bring intoxicating beverages onto the premises of a Licensed Establishment for the purposes of consuming them himself, or providing them to other individuals.

Section 7

Penalties

A. *Criminal Penalties.*

1. A permittee who is found guilty of violating any portion of this Ordinance shall have his/her permit immediately revoked and such individual shall be subject to a fine not to exceed $500.00 for each violation.

2. Any person who is found guilty of purchasing intoxicating beverages on behalf of a minor or an intoxicated person shall be subject to a fine of $500.00 for each violation or one (1) month in jail.

3. Any minor attempting to purchase intoxicating beverages or found in possession of intoxicating beverages shall be fined not more than $500.00 for each violation.

4. Any person who is found guilty of having made any false statement or concealed any material facts in his application for the permit granted him pursuant to the provisions of this Ordinance shall be immediately discharged from employment and fined not more than $500.00 for each violation.

B. *Civil Penalties.*

1. Any permittee violating any provision of this Ordinance or regulations promulgated hereunder may be subject to immediate revocation of his permit as well as immediate termination of his employment.

2. Any person possessing intoxicating beverages in violation of this Ordinance will be subject to having those beverages summarily confiscated by an authorized person. Confiscation will not preclude other civil and criminal penalties.

Section 8

Rules and Regulations

The Tribal Council may adopt and enforce rules and regulations to implement this Ordinance. The rules and regulations will be in conformance with New Mexico state law, if applicable, and with this Ordinance.

Section 9

Citations; Enforcement

Citations for violations of a provision of this Ordinance or rules or regulations promulgated hereunder may be issued by an officer of the Pueblo of Isleta police department or any person authorized by the Governor.

Section 10

Repeal

This Ordinance repeals the prior Liquor Ordinance of the Pueblo of Isleta, enacted in 1969. This repeal shall be effective on December 4, 1997.

Section 11

Severability

In the event any provision of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, all other provisions shall not be affected and shall remain in full force and effect.

Section 12

Sovereign Immunity

The sovereign immunity of the Pueblo of Isleta shall not be waived by this Ordinance.

Dated: November 19, 1997.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–31746 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1990–01]

Florida Canyon Mine Expansion and Comprehensive Reclamation Plan, Environmental Impact Statement Record of Decision and Plan of Operations Approval

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability, Record of Decision and Plan of Operations Approval for Florida Canyon Mining Company's Mine Expansion and Comprehensive Reclamation Plan Project.

DATES: The Record of Decision and Plan of Operations Approval will be distributed and made available to the public on December 2, 1997. Anyone wishing to appeal the Record of Decisions has 30 days following the date of publication of this notice in the **Federal Register.** The appeal must be postmarked no later than January 5, 1998.

ADDRESSES: A copy of the Record of Decision can be obtained from: Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Ken Loda, Project NEPA Coordinator, at the above Winnemucca Field Office address, phone (702) 623–1500, or email <kloda@nv.blm.gov>.

SUPPLEMENTARY INFORMATION: The Record of Decision consists of the action proposed in the Plan of Operation and analyzed in the Draft and Final Environmental Impact Statements. The agency Preferred Alternative includes all components of the Proposed Action. The Agency Preferred Alternative is also the environmentally preferred alternative incorporating mitigation and monitoring measures. The Proposed Action consists of expanding mining and ore processing activities at the Florida Canyon Mine, and a reclamation plan encompassing the entire operation.

Dated: November 26, 1997.

Ron Wenker,

Winnemucca District Manager.

[FR Doc. 97–31750 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–08–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet on Thursday, January 8, 1998, at Ridgway State Park south of Montrose, Colorado.

DATES: The meeting will be held on Thursday, January 8, 1998.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov

SUPPLEMENTARY INFORMATION: The January 8, 1998, meeting will begin at 9:00 a.m. at Ridgway State Park Headquarters, (Dutch Charlie entrance) on US Highway 550 approximately 21 miles south of Montrose, Colorado. The agenda will include updates on the Gunnison Basin travel management planning effort, Lake Fork Project and Squirrel Exchange, and discussions on recreation guidelines and ethics, and road closures/proliferation. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: November 24, 1997.

Jamie E. Connell,

Associate District Manager.

[FR Doc. 97–31751 Filed 12–3–97; 8:45 am]

BILLING CODE 4310–JB–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships 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 Fellowships Panel, National Heritage Fellowships Section, to the National Council on the Arts will be held on December 15–17, 1997. The panel will meet from 9:00 a.m. to 10:30 p.m. on December 15, from 9:00 a.m. to 6:30 p.m. on December 16, and from 9:00 a.m. to 3:30 p.m. on December 17 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on nominations for National Heritage Fellowship awards under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by nominees. 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, D.C. 20506, 202/682–5532, TYY/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: December 1, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations, National Endowment for the Arts.

[FR Doc. 97–31868 Filed 12–3–97; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Final Standard Review Plan for Antitrust Reviews: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) is issuing this final Standard Review Plan (SRP) for Antitrust Reviews to describe the procedures (prescribed in Sections 105 and 186 of the Atomic Energy Act of 1954, as amended) for performing antitrust reviews and enforcing antitrust license conditions. This SRP reflects current regulations and policy and will be updated as necessary to reflect changes in NRC regulations.

The revised text for the SRP for Antitrust Reviews includes the resolution of public comments received in response to the draft version issued on December 27, 1996 (61 FR 68309). The purpose of the draft SRP was to solicit comments on the current NRC staff practice in carrying out the NRC's antitrust mandate in accordance with the Atomic Energy Act, to review construction permit and operating license applications and transfer requests, and to enforce antitrust license conditions.

The NRC has published its Standard Review Plan for Antitrust Reviews (NUREG–1574), under Section 109, Nuclear Regulatory Commission Appropriation Authorization, Public Law 96–295. The SRP describes the procedures used to implement the antitrust review and enforcement provisions in Sections 105 and 186 of the Atomic Energy Act of 1954, as amended.

The final SRP for Antitrust Reviews is a ''rule'' for the purposes of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C., Chapter 8). The staff, in consultation with the Office of Management and Budget (OMB), has confirmed that this SRP is a not a major rule.

The final SRP for Antitrust Reviews does not, by itself, establish any new or revised requirements. It incorporates previously established NRC staff positions, public comments on the draft SRP for Antitrust Reviews, and lessons learned from completed reviews of various restructuring and reorganization applications. The review guidance in the SRP will be used by the NRC staff in evaluating future submittals in connection with applications for construction permits, operating licenses, combined operating licenses, and operating license transfer requests.

The final SRP for Antitrust Reviews is being made available to the public as part of the NRC's policy to inform the nuclear industry and the general public of regulatory procedures and policies. The SRP will be revised periodically to reflect changes to statutes and NRC rules and regulations.

Copies of NUREG–1574 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 26th day of November, 1997.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Acting Chief, Generic Issues and Environmental Projects Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31799 Filed 12–3–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become

final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

For further details with respect to the action see: (1) The application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room.

Date of amendment request: July 1, 1997.

Brief description of amendment: On July 1, 1997, United States Enrichment Corporation (USEC) submitted a request to revise Issue 3 of the Plan for Achieving Compliance with NRC Regulations at the Portsmouth Gaseous Diffusion Plant (Compliance Plan) and Chapter 3 of the Safety Analysis Report (SAR). The proposed amendment corrects statements made in Issue 3 of the Compliance Plan and Chapter 3 of the SAR which incorrectly depict the Autoclave Locking Ring Interlock System as having two redundant pressure ''switches'' set at +0.5 psig to prevent the autoclave from being inadvertently opened while under pressure. In fact, the autoclaves have always had only one ''switch'' set at +0.5 psig.

The existing Commitments section of Issue 3 of the Compliance Plan states:

''In addition to the safety systems summarized above, the following systems and limits are present to enhance safety:

- The Locking Ring Interlock contains pressure limit switches which interlock with the hydraulic system to prevent opening the autoclave shell while under pressure (above 0.5 psig). Although only * * *''

USEC has proposed to replace the phrase ''pressure limit switches'' with ''a pressure limit switch.''

The existing Justification for Continued Operation section of Issue 3 of the Compliance Plan states:

4. * * * alarm condition. Also, the autoclave locking ring interlock contains pressure limit switches which lock out the hydraulics to prevent the autoclaves from being opened when the internal pressure is greater than 0.5 psig. The autoclave * * *

USEC has proposed to replace the phrase ''pressure limit switches which lock'' with ''a pressure limit switch which locks.''

Accordingly, the pertinent SAR Chapter 3 sections have also been modified to address this oversight made when the initial certificate application was submitted.

PORTS uses thirteen cylindrical (6, 7, and 8 foot diameter) steam autoclaves in buildings X–342, X–343 and X–344 to feed, transfer and sample UF6 contained in cylinders. These autoclaves were designed and constructed in accordance with ASME Section VIII and provide safety by confining UF6 and any reaction products in the event of a major UF6 release inside an autoclave. Steam used to heat UF6 cylinders within autoclaves is typically controlled at approximately 5 psig. This pressure differential between the autoclave and the outside environment is maintained by way of a locking ring between the autoclave's hydraulically mobile shell and fixed head. An Autoclave Locking Ring Interlock (ALRI) system, which permits steam to be supplied to an autoclave only while it is closed, also contains a pressure switch set at −0.5 psig, which prevents the opening of an autoclave while it has an internal pressure greater than 0.5 psig. This system protects workers, who may be located in close proximity to the autoclave, from steam burns and possible contamination, in the event an autoclave is inadvertently opened while its internal pressure is greater than 0.5 psig. This pressure switch is considered to be important to safety. The ALRI system includes another pressure switch set at -0.5 psig to prevent possible damage to the autoclave hydraulic system if the autoclave is opened at a significant internal vacuum. This pressure switch is not considered to be important to safety.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The ALRI is designed to protect workers, from exposures to UF6 and the products of its reaction with steam, while they are in close proximity to a closed autoclave. Such exposures could only occur following an inadvertent opening of the autoclave while it is pressurized with UF6 and its reaction products resulting from a UF6 release accident in a closed autoclave. In addition, the ALRI is designed to protect workers from steam burns while they are in close proximity to an inadvertently opened autoclave that was pressurized with steam.

USEC has identified the ALRI systems, including the pressure switches and control relays, as Augmented Quality (AQ) systems. As such, USEC is required to apply a high level of quality control (portions of ASME NQA–1) as committed to in the Quality Assurance Plan. Application of additional QA requirements to the ALRI augments the reliability of the system (no such failure events have been reported since March 3, 1997). In addition, the interlocks are fail safe in that while the autoclave is closed, an electrical interruption to the interlock would cause the pressure switch contact and the control relay contact to remain open, which in turn would deactivate the hydraulic system keeping the locking ring from disengaging.

The UF6 containment boundaries provided by the cylinder, pigtail and valves inside an autoclave, and steam and UF6 reaction product confinement boundaries provided by the autoclave shell and piping and valves out to and including the second containment valve, are designated as ''Q'' systems. As such, USEC is required to apply the highest level of quality control (ASME NQA–1) to ensure that the pressure boundaries within these systems are maintained. Taking into consideration the applicable safety requirements (administrative and installed hardware) for preventing and/or mitigating UF6 releases associated with autoclaves, and past operational history at PORTS, the staff concludes that a major accidental release of UF6 inside a closed autoclave is highly unlikely. However, if such an accident were to occur, the pressure rise inside the autoclave would activate the autoclave containment system and the operators would be promptly alerted. Small releases of UF6 are also unlikely to occur in a closed autoclave. However, in the event of a small release, the condensate conductivity monitoring cells, which are not considered as important to safety but rather as enhancements to safety, would also activate the autoclave containment system and the operators would be promptly alerted.

The staff has concluded that having a single pressure switch in the ALRI set at +0.5 psig, which has always been the operating condition at PORTS, as opposed to having redundant pressure switches, which is indicated in USEC's Compliance Plan and SAR approved by the NRC, will not significantly increase the risk of an inadvertent release of UF6, or of the products of its reaction with steam, from the autoclave. Therefore, this amendment will not result in a

significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a UF6 release. Therefore, having a single pressure switch in the ALRI set at +0.5 psig, as opposed to having redundant pressure switches, will not result in a significant increase in individual or cumulative occupational radiation exposures.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a release of UF6 or of the products of its reaction with steam. Therefore, having a single pressure switch in the ALRI set at +0.5 psig, as opposed to having redundant pressure switches, will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

Based on the staff's review of the proposed amendment, no new or different accidents were identified.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

For the reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a release of UF6 or of the products of its reaction with steam. Based on the staff's review of the proposed amendment, the staff concludes that there will be no significant reduction of any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

For similar reasons provided in the assessment of criterion 1, the proposed amendment will not significantly increase the risk of a release of UF6 or of the products of its reaction with steam. In addition, the staff has not identified any criticality related implications from the proposed amendment. Based on the staff's review of the proposed amendment, the staff concludes that there will be no decrease in the effectiveness of the overall plant's safety program.

The staff has not identified any safeguards or security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards or security programs.

Effective date: The amendment to GDP–2 will become effective 5 days after issuance by NRC.

Certificate of Compliance No. GDP–2: The amendment will revise the Compliance Plan and the SAR.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 26th day of November 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–31797 Filed 12–3–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–22]

Private Fuel Storage Limited Liability Company Establishment of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has established a local public document room (LPDR) for records pertaining to Private Fuel Storage Limited Liability Company's (PFS) proposed independent spent fuel storage facility (ISFSI) to be constructed on the Skull Valley Goshute Indian Reservation, Utah.

Members of the public may now inspect and copy documents related to the proposed ISFSI at the University of Utah, Marriott Library, Documents Division, 295 S. 1500 East, Salt Lake City, Utah 84112–0860. The library documents division is open on the following schedule when school is in session: Monday through Thursday 7:00 a.m. to 11:00 p.m.; Friday 7:00 a.m. to 5:00 p.m.; Saturday 9:00 a.m. to 5:00 p.m.; and Sunday 11:00 a.m. to 9:00 p.m. Confirm the hours of operation during holiday and vacation periods.

For further information interested parties in the Tooele County area may contact the LPDR directly through Mr. Lee Warthen, Documents Division, telephone number (801) 581–8394. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, Washington, DC 20555–0001, telephone number toll-free 1–800–397–4209.

Questions concerning the NRC's local public document room program or the availability of documents should be addressed to Ms. Jona Souder, LPDR Program Manager, Freedom of Information/Local Public Document Room Branch, Information Management Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (301) 415–7170 or toll-free 1–800–638–8081.

Dated at Rockville, Maryland, this 1st day of December, 1997.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Information Management Division, Office of the Chief Information Officer.

[FR Doc. 97–31798 Filed 12–3–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39366; File No. SR–NASD–97–60]

Self-Regulatory Organizations; Order Approving Proposed Rule Change Filed by the National Association of Securities Dealers, Inc. Relating to Trading Halts

November 26, 1997.

I. Introduction

On August 20, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] the proposed rule change, prepared by the Nasdaq Stock Market, Inc. (''Nasdaq''), relating to trading halts. The proposed rule change was published for comment in Securities Exchange Act Release No. 39196 (October 3, 1997), 62 FR 53361 (October 14, 1997) (''Notice of Proposed Rule Change''). No comments were received on the proposal. For the reasons discussed below, the

[1] 15 U.S.C. 78s(b)(1).

Commission is approving the proposed rule change.

II. Description

Nasdaq has proposed to amend NASD Rule 4120 and IM–4120–1 to expand Nasdaq's trading halt authority and to clarify procedures for initiating certain trading halts. Rule 4120 currently sets out the bases on which Nasdaq may initiate trading halts. In addition to the existing bases, the proposed amendments authorize Nasdaq to: halt trading in the third market of a Consolidate Quotation System (''CQS'') security when a national securities exchange halts trading in such security for operational reasons; halt trading in a Nasdaq-listed security that is a derivative or component of a CQS security (such as a convertible bond, warrant, or unit), when a national securities exchange halts trading in the underlying CQS security for operational reasons; halt trading in an American Depository Receipt (''ADR'') or other Nasdaq-listed security when a national or foreign securities exchange or regulatory entity imposes a regulatory trading halt in the security underlying the ADR or the Nasdaq-listed security; and halt trading when Nasdaq requests from an issuer information relating to material news or the issuer's compliance with Nasdaq listing qualification requirements. Additionally, the proposed amendments clarify that the procedures in the rule permit Nasdaq to initiate trading halts when material information emanates from a source other than the issuer.

First, the proposed amendments expand Nasdaq's existing authority to initiate a trading halt in the third market of an exchange-listed security when the primary market initiates an operational trading halt in such security.[2] Rule 4120(a)(3) currently authorizes Nasdaq to impose an operational trading halt in those exchange-listed securities traded through the ITS/CAES linkage.[3] Under the current rule, Nasdaq may initiate a trading halt when there is an order imbalance or influx in the security and the primary market halts trading to resolve operational issues. The proposed amendments expand Nasdaq's authority and permit Nasdaq to halt trading in all exchange-listed securities traded in the third market (*i.e.*, CQS securities)[4]—not just those securities traded through the ITS/CAES linkage—when a national securities exchange initiates an operational trading halt in the CQS security.[5]

In addition, the amendments authorize Nasdaq to halt trading in an exchange-listed security and which also is a derivative or component of a CQS security, when a national securities exchange imposes an operational trading halt in the CQS security, *i.e.*, when a national securities exchange halts trading in a CQS security for an order imbalance. Currently, the Nasdaq-listed derivative security would not be halted in conjunction with the operational trading halt in the CQS security, thus making it difficult for market makers in the Nasdaq-listed security to price accurately the derivative security due to the lack of current pricing information in the underlying CQS security. That is, because the primary market is temporarily closed, price discovery is not occurring in that venue, and market makers must attempt to determine pricing independent of the primary market or may wait until the primary market reopens to price their issues. The proposed amendments, however, would allow Nasdaq to halt trading in the Nasdaq-listed security, such as a Nasdaq-traded convertible bond whose value is tied closely to an exchange-listed security, when a national securities exchange initiates an operational trading halt in a CQS security. Similar to the current provisions of Rule 4120(a)(3), the proposed amendments permit CQS and Nasdaq market makers to commence quotations and trading at any time following the initiation of the operational trading halt. Nasdaq believes that the proposed amendments foster orderly markets and investor protection because they allow Nasdaq to halt trading—based on a national securities exchange's operational trading halt—to allow market makers in related issues to assess the situation and determine the appropriate pricing of the security.

Second, Rule 4120 is being amended to authorize Nasdaq to halt trading in an ADR or other Nasdaq-listed security, when a national or foreign securities exchange or regulatory authority, for regulatory reasons, imposes a trading halt in the security underlying the ADR or the dually-listed (Nasdaq) security. There are times when another exchange, market, or regulatory entity—such as a Canadian commission or European market center with which a Nasdaq company's securities are registered or listed—implements a regulatory trading halt. These trading halts sometimes occur because the issuer is delinquent in making a required filing with the national or foreign securities exchange or regulatory entity, or the market or regulatory entity halts trading in the company's stock for a violation of that entity's rules or regulations. For example, an issuer, which is registered as a reporting company with a Canadian regulatory commission and which also is a Nasdaq-listed company or has its ADRs listed on Nasdaq, becomes delinquent in its filings with the Canadian commission. The Canadian commission subsequently initiates a trading halt in the issuer's securities. Currently, trading would continue on Nasdaq even though regulatory concerns prompted another regulatory entity to halt trading in the issuer's securities, because the issuer is in compliance with Nasdaq filing requirements. Under the proposed amendments, however, Nasdaq would now have the authority to halt trading.

Specifically, the amendments authorize Nasdaq to halt trading in an ADR or other Nasdaq-listed security, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market and trading is halted in the security for regulatory reasons by such exchange or market, or regulatory authority overseeing such exchange or market. Thus, the amendments ensure investor protection because they allow Nasdaq to take coordinated action when another market or regulatory authority identifies a regulatory basis for halting trading in an issue.

Third, Rule 4120(a)(1) currently permits Nasdaq to halt trading in a Nasdaq-listed security to permit the dissemination of material news, and

[2] The ''third market'' is the market for exchange-listed securities away from exchange markets.

[3] ITS/CAES is the NASD's link to the Intermarket Trading System (''ITS''), which is a system that enables ITS/CAES market makers to trade certain exchange-listed securities—known as SEC Rule 19c–3 securities—by allowing such market makers to direct agency and principal orders to, and receive orders from, other ITS members. SEC Rule 19c–3 prohibits off-board trading restrictions from applying to securities that: (1) Were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. (The Computer Assisted Execution System (''CAES'') is the NASD's automated system that allows members to direct principal and agency orders in exchange-listed securities to CAES for automated execution in the third market). Thus, pursuant to the ITS Plan, trading in ITS/CAES is limited to SEC Rule 19c–3 securities and excludes those securities not subject to SEC Rule 19c–3.

[4] The Consolidated Quotation System (''CQS'') is a service that provides quotations of all participating exchange specialists and market makers on all securities listed on the New York Stock Exchange and the American Stock Exchange, and selected securities listed on the regional stock exchanges.

[5] Thus, the proposed amendments would give Nasdaq expanded authority to initiate operational trading halts in the third market of SEC Rule 19c–3 securities, as well as those securities not subject to SEC Rule 19c–3.

Rules 4120(b)(1)–(3) set out the procedures for doing so.[6] Specifically, Rule 4120(b)(1) requires Nasdaq issuers to inform Nasdaq of any material news prior to the release of such information, and Rule 4120(b)(3) authorizes Nasdaq to evaluate information provided by the issuer to determine if trading should be halted prior to the release of such information. Rule 4120(b)(3) does not specifically set out procedures for initiating a trading halt when Nasdaq is advised of material news about a particular Nasdaq issuer and such news emanates from a source other than that issuer. For instance, a Nasdaq issuer may be subject to an unsolicited take-over bid by another company, of which the Nasdaq-listed company is unaware. In such instance, the acquiring issuer might disseminate news about the unsolicited take-over bid to the public; thus, Nasdaq may learn of information warranting a trading halt from a source other than the Nasdaq issuer, such as a news headline.[7] The proposed amendments to Rule 4120(b)(3) and IM–4120–1 clarify that Nasdaq may halt trading when Nasdaq learns of material news about an issuer, regardless of whether the news emanates from the particular issuer or from another source. Furthermore, proposed amendments to Rule 4120(b)(3) reflect that Nasdaq may halt trading without first consulting the issuer about material news because it may not be practicable or possible for Nasdaq to do so, such as when material news is released (without consultation with Nasdaq) by a source other than the issuer.

Next, the proposed amendments permit Nasdaq to halt trading when Nasdaq requests information from an issuer relating to material news or qualification matters. For example, Nasdaq may be advised of material news about an issuer which appears to be factually inaccurate or incomplete. This incomplete or inaccurate disclosure may raise regulatory and listing qualification issues (*i.e.*, whether the issuer is in compliance with all Nasdaq listing requirements, as set out in the Rule 4300 and 4400 Series), which Nasdaq staff would thoroughly investigate, *i.e.*, when a Nasdaq-listed company issues a press release making highly questionable claims of a significant discovery. The Nasdaq company is unable to immediately substantiate the basis for the claims, which raises serious concerns with Nasdaq as to the accuracy of the company's public statement. Accordingly, Nasdaq staff determines that additional information from the issuer is required to evaluate whether the company's public statement is accurate or requires further clarification. The proposed amendments permit Nasdaq, upon the request of certain information, to halt trading so that it may determine whether continued trading is advisable once the information is received and reviewed.

Nasdaq is proposing to amend IM–4120–1 to clarify that all trading halts initiated under Rule 4120—not just those imposed to permit the dissemination of material news—generally last one half hour, but may last longer if necessary to permit the dissemination of material news or if the original or an additional basis under Rule 4120(a) exits for continuing the halt. Furthermore, the statement in IM–4120–1 that Nasdaq will keep denials of rumors confidential is deleted to reflect Nasdaq's policy of issuing press releases indicating that MarketWatch has reviewed unusual trading activity, has contacted the issuer, and is not initiating a halt because it has not been advised of a basis for doing so.[8]

The proposed amendments also include minor conforming changes to both Rule 4120 and IM–4120–1. For example, the procedures for halting trading have been consolidated into a revised Rule 4120(b)(4) in light of the inclusion of the additional bases for initiating trading halts. References in Rule 4120 and IM–4120–1 to the ''Association'' and ''Market Regulation Department'' have been replaced with references to ''Nasdaq'' and ''MarketWatch Department'' respectively, to reflect that Nasdaq has authority for trading halts under the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries. Changes to Rule 4120(b)(2) reflect that issuers may notify MarketWatch of material news by facsimile, as well as by telephone—which is stated in the accompanying footnote to the rule but not in the rule text. Finally, references in Rules 6350(b) and 6430(b) to operational trading halts for ITS/CAES market makers have been changed to reflect that Rule 4120 will authorize Nasdaq to initiate trading halts for CQS market makers, as well as ITS/CAES market makers.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations applicable to the NASD and, in particular, with the requirements of Section 15(b). In particular, the Commission believes the proposal is consistent with the Section 15A(b)(6) requirements that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediment to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule is consistent with Section 15A(b)(11) that requires that rules of the association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission believes NASD Rule 4120 and IM–4120–1 will benefit investors because the expanded authority to halt trading will give Nasdaq third market makers the ability to allow a national securities exchange to adjust to an order imbalance or influx to better determine the appropriate price for a security. Third market makers will no longer have a disparate requirement to continuing pricing an exchange-listed security when a competing specialist has halted trading in that particular security. Moreover, Nasdaq may now also halt trading in a Nasdaq listed security that is a derivative of a security halted on a national securities exchange. Nasdaq market makers will no longer be required to price a derivative Nasdaq listed security when no accurate pricing information on the underlying security is available from a national securities exchange.

[6] The proposed change to Rule 4120(a)(1) specifies that trading in a Nasdaq-listed security may be halted ''to permit'' the dissemination of material news. (Rule 4120(a)(1) currently provides that trading in a Nasdaq-listed security may be halted ''pending'' the dissemination of material news.) The rule is being amended to specifically authorize Nasdaq to halt trading when material news technically is not ''pending,'' but a trading halt is necessary to protect investors and maintain an orderly market. For example, there are instances where Nasdaq is not advised of pending material news, material news is disseminated partially, and Nasdaq learns of such news, and Nasdaq quickly determines that a halt is necessary to permit complete dissemination of the material news. Additionally, the amendments to Rule 4120(a)(1) will bring it into parity with the language in Rule 4120(a)(2).

[7] If the company initiating the unsolicited take-over bid is a Nasdaq issuer, that company, in certain circumstances, may not be required to report the take-over bid to Nasdaq if such information is not material to the company. Thus, even if the company initiating the bid is listed on Nasdaq, Nasdaq may not be apprised of such information by either the Nasdaq company which is initiating the unsolicited take-over or the Nasdaq company which is the target of the unsolicited take-over.

[8] Note that under the proposed amendments, Nasdaq still is required to keep confidential all non-public information and use such information only for regulatory purposes.

In addition to Nasdaq's expanded authority to initiate operational trading halts, the proposed rule change will expand Nasdaq's authority to initiate regulatory trading halts when it learns of regulatory concerns (either through a regulatory trading halt by another market or incomplete or inaccurate disclosure from the issuer). The Commission believes that Nasdaq's expanded authority will help prevent fraudulent practices and protect investors.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6) and 15A(b)(11).[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act [10] that the proposed rule change (SR–NASD–97–60) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31753 Filed 12–3–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39367; File No. SR–NASD–97–53]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Trading in Exchange-Listed Securities in the Third Market

November 26, 1997.

I. Introduction

On July 28, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'').[1] The proposed rule change relating to automated quotations in exchange-listed securities in the third market, including Amendment No. 1, was published for comment in Securities Exchange Act Release No. 38985 (August 27, 1997).[2] Two comment letters were received on the proposal.[3] On October 10, 1997, the NASD filed Amendment No. 2, prepared by Nasdaq, which deferred the proposal for permissible uses of automated quotations with respect to exchange-listed securities included in the Intermarket Trading System (''ITS''). For the reasons discussed below, the Commission is approving the proposed rule change and granting accelerated approval to Amendment No. 2.

II. Description of the Proposal

The NASD's proposal included changes to several rules governing the trading in exchange-listed securities in the over-the-counter market, the so-called ''third market.'' Specifically, the NASD proposedl to amend rules of the NASD to: (1) Codify permissible uses of computer-generated quote systems with respect to exchange-listed securities;[4] (2) eliminate the excess spread rule for market makers in exchange-listed securities; (3) reduce the minimum quotation size applicable to market makers in exchange-listed securities to one unit of trading (*i.e.,* 100 shares), regardless of whether the CQS market maker [5] is displaying a customer's limit order or quoting for its own proprietary account; (4) extend exemptive provisions of the NASD's limit order protection rule applicable to Nasdaq-listed securities (the ''Manning Rule'') to exchange-listed securities; and (5) reduce from 1000 to 100 the number of shares that CAES will execute automatically.

a. Permissibility of the Use of Certain Automated Quotation Generation Systems

The plan governing the ITS Plan currently provides that exchange specialists and CQS market makers may use ''automated quotation tracking systems,'' provided that the quotations generated by such systems are for 100 shares or less (''100-Share Autoquoting Limitation''). Despite the ITS plan's allowance of 100-share autoquotes, the NASD currently prohibits CQS market makers from using autoquote systems to effect automated quote updates or to track the inside market. In addition, the NASD currently requires CQS market makers to maintain a minimum quotation size of 500 shares, with the exception of displaying a customer limit order, which also effectively prohibits CQS market makers from autoquoting.

The NASD's proposal explicitly accommodates computer-generated quotations that add value to the market and do not raise quotation accessibility concerns or compromise the capacity or integrity of Nasdaq. Specifically, the proposed rule change amends NASD Rule 6330 to permit computer-generated quotations in exchange-listed securities that generate proprietary quotes for 100 shares or more if such quote systems equal or improve either or both sides of the NBBO. For example, if a CQS market maker utilized a computer-generated quotation program to match the best offer (bid) and the market responsible to the best offer (bid) subsequently increased (decreased) its offer (bid) price, the CQS market maker could not use the program to track such inferior price. Thus, if the best offer is 20¼, a CQS market maker could use the program to improve its offer to 20¼. If the market responsible for the 20¼ offer moved to 20⅜, however, the CQS market maker could not use the program to move its offer to 20⅜.

In addition, the proposed rule change amends Rule 6330 to permit computer-generated quotations that add size to the NBBO, or are used to expose a customer's market or marketable limit order for price improvement opportunities. These uses would be in addition to three other forms of computer-enhanced quotation maintenance programs referenced in the NASD's Autoquote Policy which are also being incorporated into Rule 6330 with respect to exchange-listed securities.[6] With the exception of these

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[9] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 300.30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 62 FR 46787 (September 4, 1997).

[3] See letter from Steven Alan Bennett, Senior Vice President and General Counsel, BankOne, to Mr. Jonathan Katz, Secretary, SEC, dated September 25, 1997 (''BankOne Letter''); and letter from James E. Buck, Senior Vice President and Secretary New York Stock Exchange to Mr. Jonathan G. Katz, Secretary, SEC, dated September 29, 1997 (''NYSE Letter'').

[4] However, with the approval of Amendment No. 2 to the proposal, exchange-listed securities that are included in the ITS/Computer Assisted Execution System (''CAES'') linkage are not subject to the NASD's rule regarding permissible uses of computer-generated quote systems.

[5] Quotations and quotation sizes in reported securities may be entered into the Consolidated Quotations Service (''CQS'') through The Nasdaq Stock Market only by an Association member registered with it as a CQS market maker. See NASD Rule 6320.

[6] *See* NASD IM–4613. Specifically, these three forms are: (1) Quotation updates in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size); (2) quotation updates that

types of computer-generated quotation and maintenance systems, all other types of computer-generated quotations would continue to be prohibited. Thus, market makers could not use computer-generated quotations to track away from the inside market (''autoquoting away'').

b. Elimination of the Excess Spread Rule

The NASD also proposed to enhance the quotation flexibility of CQS market makers by eliminating the excess spread rule for CQS securities. The NASD determined that the potential adverse competitive consequences on highly automated CQS market making firms who are prohibited from autoquoting away could be minimized if the excess spread rule was eliminated. Specifically, by eliminating the excess spread rule for CQS securities, the NASD believes that CQS market makers will have more flexibility in quoting, Nasdaq capacity will not be needlessly consumed by processing voluminous quote updates autoquoting away from the market, and the competitiveness of the third market will not be compromised.

c. Changes to the Minimum Quote Size Rule for CQS Market Makers

In an environment where investors are able to directly impact quoted prices in the third market by having their limit orders displayed publicly, the NASD believes it is appropriate to treat CQS market makers in a manner equivalent to exchange specialists and not subject them to minimum quote size requirements. The NASD believes the increased order-driven nature of the third market brought about by the SEC's Limit Order Display Rule obviates the justification for the 500 Share Quote Rule. Accordingly, the NASD proposed to amend the 500 Share Quote Rule to permit a CQS market maker to post quotations commensurate with their own freely-determined trading interest, provided, however, that the quotations must be for at least one normal unit of trading.

d. Modifications to CAES

The implementation of the Order Execution Rules has required market makers to display customers limit orders, thereby compelling CQS market makers, who are not only obligated to execute trades up to 1,000 shares at another market maker's quote, to execute trades at superior-priced limit orders displayed by any other CQS market maker, even if such limit orders are only for 100 shares. In addition, because Nasdaq no longer processes CQS quotes,[7] CAES executes orders at the best bid or offer price in the third market instead of the national best bid or offer (''NBBO''). As a result, when there are no CQS market makers at the NBBO, CAES is providing inferior executions to customer orders.

In order to facilitate the best execution of customer orders and not subject CQS market makers to automatic executions at prices other than their posted quotes, the NASD believes it is imperative that CAES be appropriately modified. Accordingly, the NASD has proposed to amend the operation of CAES so that it automatically executes orders up to 100 shares instead of 1,000 shares. An order can be preferenced for larger than 100 shares to a CQS market maker and, although the order will not be automatically executed, the order will be processed by the CQS market maker pursuant to its firm quote obligations.[8]

e. Modifications to the Limit Order Protection Rule Applicable to CQS Securities

NASD proposed to amend Rule 6440 to permit a member to negotiate special terms and conditions with a customer that would enable the firm to trade ahead of, or at the same price as, the limit order price. Specifically, under the Manning Rule, member firms may attach terms and conditions with respect to the handling of limit orders that are either: (1) For institutional accounts,[9] or (2) limit orders that are for 10,000 shares or greater, regardless of whether they are for institutional accounts, provided that the order is $100,000 or more in value. The NASD proposed to extend the ''terms and conditions'' language of the Manning Rule to the CQS limit order protection rule.

III. Discussion

In August 1996, the Commission adopted new Rule 11Ac1–4 (''Limit Order Display Rule'') and amendments to Rule 11Ac1–1 (''Quote Rule'').[10] As amended, the expanded definition of ''subject security''[11] within the Quote Rule obligates any NASD member that acts in the capacity of an over-the-counter (''OTC'') market maker[12] to provide continuous two-sided quotations for any exchange-listed security[13] in which that member, during the most recent calendar quarter, comprised more than 1% of the aggregate trading volume for such security as reported in the consolidated system (''1% Rule'').[14] An OTC market maker must, within 10 business days of the end of each calendar quarter, compute its trading volume for each subject security, and if the volume exceeds 1%, the market maker must begin publishing two-sided quotations.

The Commission began implementing the Order Execution Rules on January 20, 1997. The Commission, however, deferred implementation of the expanded 1% Rule until September 30, 1997.[15] In light of the implementation of the 1% Rule to all exchange-listed securities, the NASD proposed the aforementioned amendments to its rules governing trading in exchange-listed securities in the third market.

The Commission received two comment letters on the proposed rule change. The BankOne comment letter supported the NASD's proposal. The

require a physical entry (such as manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); and (3) quotation updates that reflect the receipt, execution, or cancellation of a customer limit order.

[7] See Exchange Act Release No. 37663, September 10, 1996 (61 FR 48725) (order approving File No. SR–NASD–96–26).

[8] See 17 CFR 240.11Ac1–1.

[9] Institutional limit orders are orders for institutional accounts. NASD Rule 3110(c) defines an institutional account as an account for: (1) Banks, savings and loan associations, insurance companies, or registered investment companies; (2) investment advisers registered under Section 203 of the Investment Advisers Act of 1940; and (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

[10] See Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Adopting Release'') adopting the Limit Order Display Rule and amendments to the Quote Rule (collectively the ''Order Execution Rules'').

[11] Rule 11Ac1–1(a)(25).

[12] See Rule 11Ac1–1(a)(13).

[13] See Rule 11Ac1–1(a)(10) which defines ''exchange-traded security'' to mean any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange; provided, however, that securities not listed on any exchange that are traded pursuant to unlisted trading privileges are excluded.

[14] The 1% Rule, prior to being expanded in the Order Execution Rules, applied only to 19c–3 securities. Exchange Act Rule 19c–3 prohibits the application of off-board trading restrictions to securities that: (1) Were not traded on an exchange on or before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. Accordingly, exchange-traded securities not subject to off-board trading restrictions are referred to as Rule 19c-3 securities, and exchange-traded securities subject to off-board trading restrictions are referred to as non-Rule 19c-3 securities. The 1% Rule was expanded to include all exchange-listed securities, both Rule 19c-3 and non-Rule 19c-3.

[15] See Securities Exchange Act Release Nos. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997); 38490 (April 9, 1997), 62 FR 18514 (April 16, 1997); and 38870 (July 24, 1997), 62 FR 40732 (July 30, 1997). Therefore, until September 30, 1997, OTC market makers were only obligated to publicly disseminate quotations when they were responsible for 1% or more of the trading volume in a 19c-3 security.

NYSE comment letter did not address the specifics of the NASD proposal. Nevertheless, the NYSE was concerned with the NASD proposal to amend Rule 6330 to effectively lift its ban on autoquoting because of the conflict with the ITS Plan. Although the ITS Participants are currently discussing whether to amend the ITS Plan with regard to permissible uses of computer-generated quotations, the current ITS Plan limits computer-generated quotations to 100 shares. The ITS Plan governs all ITS Participants, including the NASD. Therefore, the NYSE does not believe the NASD Rule permitting the use of computer-generated quotations should be extended to those exchange-listed securities that are included in the ITS.

In response to the NYSE comment letter, and in recognition of the lack of unanimous consensus from ITS Participants, the NASD filed Amendment No. 2 to the proposal requesting the Commission to proceed with the proposed rule change with respect to non-Rule 19c-3 securities. The NASD also noted that they are concerned that market makers may experience difficulty in using enhanced automation support if they are only permitted to do so for a portion (*i.e.*, non-Rule 19c-3 securities) of the exchange-listed securities they maintain quotations in. Therefore, the practical result of removing the burdens of complying with the 1% Rule would be lost.

In expanding the 1% Rule, the Commission recognized that it raised an issue with respect to the ability of NASD members to autoquote. The Commission stated that ''a total prohibition on the use of computer generated quotes is not appropriate'' and that ''[s]uch an approach excessively limits the use of sophisticated trading strategies that rely on automation in the quotation process for their success, and it also may act as a competitive disadvantage to market makers and specialists that would otherwise rely on technology to meet their quotation obligations more efficiently.'' [16] While the Commission noted that it ''recognizes traditional concerns related to the accessibility of computer generated quotes and the impact of such quotes on system capacity, it believes that more can and should be done in this area.'' [17] The Commission stressed that more should be done particularly ''given the enhanced quotation obligations that will be imposed on some market participants under the revised Quote Rule.'' [18] The Commission, therefore, urged the ''NASD, ITS Participants, and other interested market participants to develop revised standards that would permit the use of computer generated quotes that contribute value to the market.'' [19]

The Commission believes the NASD proposal provides its members with the ability to use computer-generated quotations that add value to the market and do not raise quotation accessibility concerns. The NASD proposal does not permit autoquoting away which would subject Nasdaq to capacity constraints as well compromise the value of quotations. The Commission believes the proposal facilitates the implementation of the Order Execution Rules, specifically, the 1% Rule by providing OTC market makers with the ability to use computer-generated quotations. The Commission notes, however, that permitting computer-generated quotations for only non-Rule 19c–3 securities may inhibit some market makers because they may not be able to distinguish those quotations from their quotations in other exchange-listed securities. The Commission expects that the ITS Participants will continue in their discussions to amend the ITS Plan to permit computer-generated quotations. In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation.[20]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 11A(a)(1)(D), 11A(a)(2) and 15A(b)(6) of the Exchange Act.[21] Section 11A(a)(1)(D) of the Exchange Act states that the linking of all markets for qualified securities through communications and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investor's orders and contribute to best execution of such orders, and subsection (a)(2) thereunder directs the Commission to facilitate the establishment of a national market system for qualified securities. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just an equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above should be submitted by December 29, 1997.

V. Conclusion

For the reasons discussed in this order, pursuant to Section 19(b)(2) of the Exchange Act,[22] the Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,

[16] See Adopting Release at Section III.B.3.c.i.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] 15 U.S.C. 78c(f).

[21] In addition, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule will likely contribute to more accurate and informative quotations because market makers are able to use automated measures to produce accessible quotations that add value to the market. The Commission believes that permitting the use of automated quotations by CQS market makers allows them to utilize technology to fulfill their quotation obligations efficiently. Moreover, allowing CQS market makers to utilize technology in this manner reduces any competitive disadvantage that the previous auto-quote ban may have created. 15 U.S.C. § 78c(f).

[22] 15 U.S.C. 78s(b)(2).

that the proposed rule change (NASD–97–53) be, and hereby is, approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–31754 Filed 12–3–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2658]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, December 17–18, 1997, in Conference Rooms 1205 and 7516.

The Committee will meet in open session from 9 a.m. through 12 p.m. on the morning of Wednesday, December 17, 1997. The remainder of the Committee's sessions from 1:45 p.m. on Wednesday December 17, until 5 p.m. on Thursday, December 18, 1997, will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail pahistoff@panet.us-state.gov).

Dated: November 17. 1997.

William Z. Slany,

Executive Secretary.

[FR Doc. 97–31773 Filed 12–3–97; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–60]

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, DC 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, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267–9681 or Tawana Matthews (202) 267–9783, 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, DC, on December 1, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 28846.

Petitioner: Gulfstream International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.2(d)(1)(I)(D), 121.337(b)(8), 121.359(g).

Description of Relief Sought: To permit Gulfstream to operate 25 Beechcraft 1900C airplanes in passenger-carrying operations without approved smoked and fume protective breathing equipment for flight crewmembers until March 20, 1998.

[FR Doc. 97–31790 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Melbourne International Airport, Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Melbourne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 5, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5990 Hazeltine National Dr., Suite 400, Orlando Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James C. Johnson, Director of Aviation of the Melbourne Airport Authority at the following address: Melbourne Airport Authority, Melbourne International Airport, One Air Terminal Parkway, Suite 220, Melbourne, Florida 32901–1888.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Melbourne Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon P. Rupinta, Project Manager, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822, 407–812–6331. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

[23] 17 CFR 200.30–3(A)(12).

comment on the application to impose and use a PFC at Melbourne International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 26, 1997, the FAA determined that the application to impose and use a PFC submitted by Melbourne Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 4, 1998.

The following is a brief overview of PFC Application No. 98–02–C–00–MLB.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: January 1, 1999.

Total estimated PFC revenue: $614,362.

Brief description of proposed project(s): Runway 9R–27L Improvements—Phase 1.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Melbourne Airport Authority.

Issued in Orlando, Florida.

Charles E. Blair,

Manager, Orlando Airports District Office Southern Region.

[FR Doc. 97–31791 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Norfolk-Virginia Beach Light Rail Transit Project in the Norfolk-Virginia Beach, Virginia Corridor

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Tidewater Transportation District Commission (TRT), in cooperation with the Virginia Department of Rail and Public Transportation and the Hampton Roads Metropolitan Planning Organization, intend to prepare an Environmental Impact Statement (EIS), for the Norfolk-Virginia Beach Light Rail Transit Project in the Norfolk-Virginia Beach, Virginia corridor. The EIS is being prepared in conformance with the National Environmental Policy Act (NEPA) and will also satisfy the requirements of the 1990 Clean Air Act Amendments (CAAA). The EIS will evaluate the following transportation alternatives: a No-Build alternative, a Transportation Systems Management (TSM) alternative, and the light rail transit alignment. The Tidewater Transportation District Commission will be the lead agency for the preparation of the EIS.

SCOPING PROCESS: The purpose of the Public Scoping Meeting is to provide interested individuals with an introduction to and an overview of the EIS process and the opportunity for comments on the significant issues and impacts to be addressed in the EIS. Comments may be submitted orally at the Scoping Meeting or in Writing to Ms. Jayne Whitney, Project Director, Tidewater Transportation District Commission, 1500 Monticello Avenue, Norfolk, Virginia 23510 during the Scoping comment period for the preparation of the Draft Environmental Impact Statement (DEIS) which ends on Thursday, January 22, 1998.

The Scoping Meeting will begin with an ''open house'' where attendees will be able to view graphics and discuss the project with the project representatives. A presentation on the project will be given at 6:00 P.M., followed by an additional opportunity for questions and answers. Scoping material will be available at the meeting or in advance of the meeting by contacting Ms. Janette Crumley at (757) 640–6295 or Ms. Delores Gee at (757) 640–6251. A sign language interpreter will be available for the hearing impaired. A TDD number (757) 640–6255 is also available. The buildings are accessible to people with disabilities. Scoping meetings will be held on:

1. Tuesday, December 9, 1997, 4 p.m.–7 p.m., Tidewater Transportation District Commission Headquarters, 1500 Monticello Avenue, Norfolk, Virginia 23510.

2. Thursday, December 11, 1997, 4 p.m.–7 p.m., ODU/NSU Virginia Beach Higher Education Center, 3300 South Building, 397 Little Neck Road, Virginia Beach, Virginia 23452.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred Lebeau, Transportation Program Specialist, Federal Transit Administration, Region III, (215) 656–7100.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and TRT invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental impacts to be evaluated, and suggesting alternatives that are less costly or have less environmental impacts while achieving similar transit objectives. During Scoping comments should focus on the alternatives under consideration and not on a preference for a particular alternative. Individual preference for a particular alternative should be communicated during the draft EIS comment period. Scoping comments may be made at the Public Scoping Meeting or in writing within 45 days after publication of this notice. See the ''Scoping Process'' section above for locations and times.

II. Description of Study and Project Need

The proposed project consists of an 18.25 mile light rail transit system between Downtown Norfolk and the Virginia Beach Pavilion Convention Center generally following the Norfolk Southern Railroad right-of-way. A combination of single and double track light rail transit construction is being studied. The study includes a proposal for 13 stations, many of which will provide both bus and park-and-ride access.

The Norfolk-Virginia Beach corridor has been and continues to be an area of significant growth for the region. One hundred thousand people commute into the City of Norfolk and 30,000 into Virginia Beach every day from outside those communities. Virginia Beach Boulevard and Route 44/I–264 are at or over capacity at many locations at this time with traffic forecast to grow by another 87 percent on Route 44 by the Year 2015. Both of these roadways have been expanded to the limits of the existing, available right-of-way.

The study corridor shows population concentrations along the Virginia Beach to Norfolk corridor that would potentially support further justification for expanded transit service. Population densities, particularly of minority, elderly or low-income individuals often rely on transit for their transportation needs. Regional employment also has continued to grow. Norfolk continues to be the major employment center in the

region with two major employment destinations: the Naval Base Norfolk and Norfolk's Central Business District. The emergence of new activity centers along the corridor within the last fifteen years has created new commuting patterns and additional demands on transportation facilities.

In response to this need, TRT has completed a Major Investment Study (MIS) for the Norfolk-Virginia Beach corridor. The results of the MIS study resulted in a preferred alternative of a light rail transit system with limited stops along the corridor, and includes stations, park and ride lots, and transit centers. Transit improvements are intended to alleviate traffic congestion in the Norfolk-Virginia Beach corridor and help achieve regional air quality goals by providing an alternative to the single occupant vehicle.

III. Alternatives

The transportation alternatives proposed for consideration in this project area include: (1) No-Build, which involves no change to transportation services or facilities in the corridor beyond already committed projects, (2) a Transportation System Management (TSM) alternative which consists of low to medium cost improvements to the facilities and operations of the TRT bus system in addition to the currently planned transit improvements in the corridor, and (3) a new light rail alignment (including line, station locations and support facilities) generally following the existing Norfolk Southern rail corridor between Norfolk and Virginia Beach and on surface streets in Downtown Norfolk and to the Virginia Beach Pavilion, and a modified bus service component.

IV. Probable Effects

The FTA and TRT will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: Land use and neighborhood protection, traffic and parking, visual, noise and vibration, safety, aesthetics, stormwater management, archaeological, historic, cultural and ecological resources, wildlife corridors. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and potentially contaminated sites will also be studied. Displacements and relocations, ecosystems, water resources, hazardous waste, parklands, and energy impacts will be assessed. The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate any significant adverse impacts will be developed.

V. FTA Procedures

In accordance with the federal transportation planning regulations (23 CFR Part 450), the Draft EIS will be prepared to include an evaluation of the social, economic and environmental impact of the alternatives. The DEIS will consider the public and agency comments received and the TRT in concert with the Secretary of the Virginia Department of Rail and Public Transportation and Hampton Roads Metropolitan Planning Organization and other affected agencies, will select the preferred alternative. Then the TRT, as lead agency, will continue with the preparation of the Final EIS. Opportunity for additional public comment will be provided throughout all phases of project development.

Issued: December 1, 1997.

Sheldon A. Kinbar,

Regional Administrator.

[FR Doc. 97–31803 Filed 12–3–97; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33514]

Buffalo & Pittsburgh Railroad, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant bridge trackage rights to Buffalo & Pittsburgh Railroad, Inc. (B&P), described as follows: (1) Conrail's Olean Secondary between the B&P/Conrail connection at milepost 408.8± at Carrollton, NY, and milepost 395.0± at Olean, NY, the connection with Conrail's Buffalo Line, including that portion of Conrail's track known as the North West Connection Track (connection between Conrail's Olean Secondary and its Buffalo Line), a distance of approximately 13.8 miles; (2) Conrail's Buffalo Line between milepost 69.4± at CP North Olean, and milepost 5.7± CP–GJ, a distance of approximately 63.7 miles; (3) Conrail's Ebenezer Secondary between milepost 5.7± (connection with Conrail's Buffalo Line) and milepost 0.4± (connection with Conrail's Chicago Line, within CP–Draw), a distance of approximately 5.3 miles; (4) Conrail's Chicago Line between milepost 1.7± (connection with Conrail's Ebenezer Secondary) and milepost 1.77± (connection with B&P), a distance of approximately 0.07 of a mile; and (5) Conrail's Transco Wye in Buffalo, NY, between milepost 1.9± (Erie) on Conrail's Ebenezer Secondary and the end of Conrail's Transco Wye (connection with Conrail's Bison Runner), a distance of approximately 0.6 of a mile.[1] The total combined distance of the trackage rights is approximately 83.47 miles.[2]

B&P was expected to commence operations on or after the November 24, 1997 effective date.[3]

The purpose of the proposed trackage rights is to allow B&P to shift overhead traffic from a roughly parallel line that is in need of rehabilitation.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). This notice is filed under 49 CFR 1180.2(d)(7). 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. 33514, 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: Eric M. Hocky, Esquire, Gollatz, Griffin &

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[1] B&P states that at this point it has existing rights over Conrail's line of railroad to conduct interchange between its Buffalo Creek Yard and ''SK'' Yard of the Delaware and Hudson Railway (CP Rail system) Buffalo, NY, subject to a separate agreement it has with Conrail, dated February 1, 1980.

[2] The trackage rights are granted for the sole purpose of B&P's use for bridge traffic only between B&P/Conrail connections. B&P shall not perform any local freight service at any point located on the subject trackage. The trackage rights also provide that B&P shall not have the right to permit or admit any third party to the use of all or any portion of the subject trackage, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars of any third party which in the normal course of business would not be considered the trains, locomotives, cabooses or cars of B&P; provided however, that the foregoing shall not prevent B&P, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under the trackage rights agreement.

[3] On November 20, 1997, Samuel J. Nasca, on behalf of United Transportation Union-New York State Legislative Board, filed a petition to reject the notice of exemption, or to revoke the exemption, and/or for stay of the effective date of the exemption pending disposition of the request for rejection or revocation. The petition will be addressed in a separate decision.

Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: November 26, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31796 Filed 12–3–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[TD 97–96]

Reasonable Care Checklist

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document sets forth, for guidance, a checklist of measures which importers and their agents may find helpful in meeting the ''reasonable care'' requirements of the Customs laws.

DATES: Effective December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Pisani, Penalties Branch, International Trade Compliance Division, Office of Regulations and Rulings, (202) 927–1203.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 1997, the Customs Service published a Second Discussion Draft in the Customs Bulletin (as well as the Customs Electronic Bulletin Board and Customs Internet Website) concerning the importer's obligation to use reasonable care. Based on comments received in response to the initial discussion draft on reasonable care, Customs decided to adopt a ''checklist'' approach—as a means to provide guidance regarding an importer's obligation to use reasonable care. The second discussion draft set forth an expanded and revised checklist, and requested public comment on the document by June 30, 1997.

Customs has finalized its review of all second discussion draft comments received from interested parties. The ''final'' checklist follows the discussion of the public comments, and Customs notes that the document contains relatively minor revisions to the checklist published on May 16, 1997. Customs also notes that the majority of the comments received from the public favored the adoption of the checklist. It should also be pointed out that although Customs is publishing the ''final'' checklist, the agency's adoption of this format for providing guidance may readily be expanded in the future to suit the changing nature of international trade—without resort to statutory or regulatory amendment. Also it should be reiterated that, as new Customs regulations are proposed, it is anticipated that regulatory references to the reasonable care standard will be included.

Discussion

The majority of comments received by Customs applauded the agency's decision to adopt the checklist approach to the issue of reasonable care. There is a general consensus that a ''black and white'' definition of reasonable care is impossible, inasmuch as the concept of acting with reasonable care depends upon individual circumstances.

The most prevalent concern about the checklist raised by commenters involved Customs use of the term ''expert'' in those checklist questions pertaining to relying on the advice of an ''expert.'' Some commenters are concerned that unlicensed and unregulated individuals are regularly advising importers in Customs matters—i.e., holding themselves out as ''Customs experts'' or Customs consultants, in violation of section 641 of the Tariff Act of 1930. In addition, one commenter is of the opinion that the public should not be misled into believing that it constitutes reasonable care to consult with anyone who chooses to call himself or herself a Customs expert.

With respect to the above concerns, Customs notes that publication of the checklist is not intended to condone the unlawful conduct of Customs business by unlicensed individuals or entities. Rather, the agency's use of the term ''expert'' is in conformity with the Customs Modernization Act's legislative history as reflected in the language of the House of Representatives and Senate Reports (H.Rep. 103–361, pg. 120; S. Rep. 103–189, pg. 73) discussion of the reasonable care standard. A party's selection of an expert, and the expert's qualifications are part and parcel of the review of all of the facts and circumstances in the agency's determination whether the party has exercised reasonable care. In Customs view, the importer who retains the services of an ''expert'' bears some responsibility in ensuring that the party is qualified to render advice on the Customs matter at issue. In Customs view, it is not unreasonable to expect that a party selecting an expert will inquire about the Customs experience and credentials of an expert. Customs believes this responsibility to be particularly important in cases involving selection of unlicensed experts such as consultants. The existence of experienced Customs lawyers and licensed brokers makes fulfillment of this responsibility an easier task—but in Customs view, to limit the selection of an expert to these individuals runs contrary to the language of the congressional reports. In sum, the importer or party selecting an expert must use judgment and reason in making his or her selection.

One commenter expressed a reservation about the checklist in that ''assiduous compliance with the list for every entry would require an impossible expenditure of time and resources.'' The commenter believes that the checklist fails to keep sight of ''commercial realities and business realities.''

Customs believes it is important to underscore that the checklist is not a law or Customs regulation, and that it merely serves to provide guidance and information to the importing community to assist the members of the community in meeting reasonable care obligations. In publishing the checklist, Customs is not mandating that each and every question be asked by each and every importer for all transactions. Rather, the checklist serves as a flexible tool to help importers find and/or understand statutory and regulatory obligations involved in the importation process. Customs notes that the agency rejected the regulatory and policy statement approaches set forth in the first discussion draft for the very reasons set forth by the commenter. In this regard, Customs believes the following excerpts from the second discussion draft warrant reiteration:

> * * * [I]t is important to remember that not every incident of non-compliance involves a failure to exercise reasonable care. The circumstances surrounding an incident of non-compliance determine whether or not the incident involves culpable conduct.
>
> * * * For example, if Customs were to enact a regulation, or issue a policy statement setting forth ''reasonable care'' parameters and standards, such regulation or policy statement could be considered helpful, cost-effective and instructive to a large multi-national importer, yet harmful, impractical, intrusive and cost-defective to a smaller organization.
>
> Rather than attempting to dictate specific methods of compliance with regard to a standard that demands flexibility and is dependent upon circumstance, Customs believes that by providing guidance and education the agency is working toward fulfilling the principle of informed compliance which underscores the Customs Modernization Act.

One of the commenters suggested that the agency abandon General Question

No. 3 pertaining to alerting Customs of different treatment at different ports for the same merchandise or transactions. The commenter believes that it is the responsibility of the Customs Service to coordinate and ensure uniformity. In addition, the commenter believes it is unnecessary to require that the importer attach a ruling it receives to every entry, provided that the importer follows the ruling.

Customs does not agree that it is reasonable for an importer to remain silent when it becomes aware that the same merchandise or transaction is receiving different treatment at different ports. Further, it is important to remember that the checklist is not a vehicle to amend existing law or regulation or law—rather, the checklist questions pertaining to the Customs rulings program simply point out the importer's obligations under existing law and regulation.

Several commenters recommended that Customs revise some of the questions in the checklist to emphasize that the exercise of reasonable care also applies to the process employed by the importer in preparing its Customs entries. The commenters suggest that some questions be added and/or revised to reflect that the exercise of reasonable care also encompasses an importer's development and maintenance of reasonable steps or reasonable procedures to ensure compliance with the Customs laws and regulations.

Customs agrees and has added new questions and/or revised some of the existing questions to reflect the recommendations set forth above.

As a convenience to the public, the checklist published below also includes the checklist previously published in the **Federal Register** for use in certain textile and apparel importations. The full document was published in 62 FR 48340 (September 15, 1997).

Reasonable Care Checklist

Preamble

One of the most significant effects of the Customs Modernization Act is the establishment of the clear requirement that parties exercise ''reasonable care'' in importing into the United States. Section 484 of the Tariff Act, as amended, requires an importer of record ''using reasonable care'' to make entry by filing such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody,'' and using reasonable care—''complete the entry by filing with the Customs Service the declared value, classification and rate of duty'' and ''such other documentation * * * or information as is necessary to enable the Customs Service to * * * properly assess duties * * * collect accurate statistics * * * determine whether any other applicable requirement of law * * * is met.'' Despite the seemingly simple connotation of the term ''reasonable care,'' this explicit responsibility defies easy explanation. The facts and circumstances surrounding every import transaction differ—from the experience of the importer to the nature of the imported articles. Consequently, neither the Customs Service nor the importing community can develop a foolproof reasonable care ''checklist'' which would cover every import transaction. On the other hand, in keeping with the Modernization Act's theme of ''informed compliance,'' the Customs Service would like to take this opportunity to recommend that the importing community examine the list of questions below. In Customs view, the list of questions may prompt or suggest a program, framework or methodology which importers may find useful in avoiding compliance problems and meeting ''reasonable care'' responsibilities.

Obviously, the questions below cannot be exhaustive or encyclopedic—ordinarily, every import transaction is different. For the same reason, it cannot be overemphasized that although the following information is provided to promote enhanced compliance with the Customs laws and regulations, it has no legal, binding or precedential effect on Customs or the importing community. In this regard, Customs notes that the checklist is not an attempt to create a presumption of negligence, but rather, an attempt to educate, inform and provide guidance to the importing community. Consequently, Customs believes that the following information may be helpful to the importing community and hopes that this document will facilitate and encourage importers to develop their own unique compliance measurement plans, reliable procedures and ''reasonable care'' programs.

As a convenience to the public, the checklist also includes the text of a checklist previously published in the **Federal Register** for use in certain textile and apparel importations. The full document was published in 62 FR 48340 (September 15, 1997).

As a final reminder, it should be noted that to further assist the importing community, Customs issues rulings and informed compliance publications on a variety of technical subjects and processes. It is strongly recommended that importers always make sure that they are using the latest versions of these publications.

Asking and answering the following questions may be helpful in assisting importers in the exercise of reasonable care

General Questions for all Transactions

1. If you have not retained an expert to assist you in complying with Customs requirements, do you have access to the Customs Regulations (Title 19 of the Code of Federal Regulations), the Harmonized Tariff Schedule of the United States, and the GPO publication ''Customs Bulletin and Decisions?'' Do you have access to the Customs Internet Website, Customs Electronic Bulletin Board or other research service to permit you to establish reliable procedures and facilitate compliance with Customs laws and regulations?

2. Has a responsible and knowledgeable individual within your organization reviewed the Customs documentation prepared by you or your expert to ensure that it is full, complete and accurate? If that documentation was prepared outside your own organization, do you have a reliable system in place to insure that you receive copies of the information as submitted to Customs; that it is reviewed for accuracy; and that Customs is timely apprised of any needed corrections?

3. If you use an expert to assist you in complying with Customs requirements, have you discussed your importations in advance with that person and have you provided that person with full, complete and accurate information about the import transactions?

4. Are identical transactions or merchandise handled differently at different ports or Customs offices within the same port? If so, have you brought this to the attention of the appropriate Customs officials?

Questions Arranged by Topic

Merchandise Description & Tariff Classification

Basic Question: Do you know or have you established a reliable procedure or program to ensure that you know what you ordered, where it was made and what it is made of?

1. Have you provided or established reliable procedures to ensure you provide a complete and accurate description of your merchandise to Customs in accordance with 19 U.S.C. 1481? (Also, see 19 CFR 141.87 and 19 CFR 141.89 for special merchandise description requirements.)

2. Have you provided or established reliable procedures to ensure you provide a correct tariff classification of your merchandise to Customs in accordance with 19 U.S.C. 1484?

3. Have you obtained a Customs ''ruling'' regarding the description of the merchandise or its tariff classification (See 19 CFR part 177), and if so, have you established reliable procedures to ensure that you have followed the ruling and brought it to Customs attention?

4. Where merchandise description or tariff classification information is not immediately available, have you established a reliable procedure for providing that information, and is the procedure being followed?

5. Have you participated in a Customs pre-classification of your merchandise relating to proper merchandise description and classification?

6. Have you consulted the tariff schedules, Customs informed compliance publications, court cases and/or Customs rulings to assist you in describing and classifying the merchandise?

7. Have you consulted with a Customs ''expert'' (e.g., lawyer, broker, accountant, or Customs consultant) to assist in the description and/or classification of the merchandise?

8. If you are claiming a conditionally free or special tariff classification/provision for your merchandise (e.g., GSP, HTS Item 9802, NAFTA, etc.), How have you verified that the merchandise qualifies for such status? Have you obtained or developed reliable procedures to obtain any required or necessary documentation to support the claim? If making a NAFTA preference claim, do you already have a NAFTA certificate of origin in your possession?

9. Is the nature of your merchandise such that a laboratory analysis or other specialized procedure is suggested to assist in proper description and classification?

10. Have you developed a reliable program or procedure to maintain and produce any required Customs entry documentation and supporting information?

Valuation

Basic Questions: Do you know or have you established reliable procedures to know the ''price actually paid or payable'' for your merchandise? Do you know the terms of sale; whether there will be rebates, tie-ins, indirect costs, additional payments; whether ''assists'' were provided, commissions or royalties paid? Are amounts actual or estimated? Are you and the supplier ''related parties''?

1. Have you provided or established reliable procedures to provide Customs with a proper declared value for your merchandise in accordance with 19 U.S.C. 1484 and 19 U.S.C. 1401a?

2. Have you obtained a Customs ''ruling'' regarding the valuation of the merchandise (See 19 CFR Part 177), and if so, have you established reliable procedures to ensure that you have followed the ruling and brought it to Customs attention?

3. Have you consulted the Customs valuation laws and regulations, Customs Valuation Encyclopedia, Customs informed compliance publications, court cases and Customs rulings to assist you in valuing merchandise?

4. Have you consulted with a Customs ''expert'' (e.g., lawyer, accountant, broker, Customs consultant) to assist in the valuation of the merchandise?

5. If you purchased the merchandise from a ''related'' seller, have you established procedures to ensure that you have reported that fact upon entry and taken measures or established reliable procedures to ensure that value reported to Customs meets one of the ''related party'' tests?

6. Have you taken measures or established reliable procedures to ensure that all of the legally required costs or payments associated with the imported merchandise have been reported to Customs (e.g., assists, all commissions, indirect payments or rebates, royalties, etc.)?

7. If you are declaring a value based on a transaction in which you were/are not the buyer, have you substantiated that the transaction is a bona fide sale at arm's length and that the merchandise was clearly destined to the United States at the time of sale?

8. If you are claiming a conditionally free or special tariff classification/provision for your merchandise (e.g., GSP, HTS Item 9802, NAFTA, etc.), have you established a reliable system or program to ensure that you reported the required value information and obtained any required or necessary documentation to support the claim?

9. Have you established a reliable program or procedure to produce any required entry documentation and supporting information?

Country of Origin/Marking/Quota

Basic Question: Have you taken reliable measures to ascertain the correct country of origin for the imported merchandise?

1. Have you established reliable procedures to ensure that you report the correct country of origin on Customs entry documents?

2. Have you established reliable procedures to verify or ensure that the merchandise is properly marked upon entry with the correct country of origin (if required) in accordance with 19 U.S.C. 1304 and any other applicable special marking requirement (watches, gold, textile labeling, etc)?

3. Have you obtained a Customs ''ruling'' regarding the proper marking and country of origin of the merchandise (See 19 CFR Part 177), and if so, have you established reliable procedures to ensure that you followed the ruling and brought it to Customs attention?

4. Have you consulted with a Customs ''expert'' (e.g., lawyer, accountant, broker, Customs consultant) regarding the correct country of origin/proper marking of your merchandise?

5. Have you taken reliable and adequate measures to communicate Customs country of origin marking requirements to your foreign supplier prior to importation of your merchandise?

6. If you are claiming a change in the origin of the merchandise or claiming that the goods are of U.S. origin, have you taken required measures to substantiate your claim (e.g., Do you have U.S. milling certificates or manufacturer's affidavits attesting to the production in the U.S.)?

7. If you are importing textiles or apparel, have you developed reliable procedures to ensure that you have ascertained the correct country of origin in accordance with 19 U.S.C. 3592 (Section 334, Pub. L. 103–465) and assured yourself that no illegal transshipment or false or fraudulent practices were involved?

8. Do you know how your goods are made from raw materials to finished goods, by whom and where?

9. Have you checked with Customs and developed a reliable procedure or system to ensure that the quota category is correct?

10. Have you checked or developed reliable procedures to check the Status Report on Current Import Quotas (Restraint Levels) issued by Customs to determine if your goods are subject to a quota category which has ''part'' categories?

11. Have you taken reliable measures to ensure that you have obtained the correct visas for your goods if they are subject to visa categories?

12. In the case of textile articles, have you prepared or developed a reliable program to prepare the proper country declaration for each entry, i.e., a single country declaration (if wholly obtained/produced) or a multi-country declaration (if raw materials from one

country were produced into goods in a second)?

13. Have you established a reliable maintenance program or procedure to ensure you can produce any required entry documentation and supporting information, including any required certificates of origin?

Intellectual Property Rights

Basic Question: Have you determined or established a reliable procedure to permit you to determine whether your merchandise or its packaging bear or use any trademarks or copyrighted matter or are patented and, if so, that you have a legal right to import those items into, and/or use those items in, the U.S.?

1. If you are importing goods or packaging bearing a trademark registered in the U.S., have you checked or established a reliable procedure to ensure that it is genuine and not restricted from importation under the ''gray-market'' or parallel import requirements of U.S. law (see 19 CFR 133.21), or that you have permission from the trademark holder to import such merchandise?

2. If you are importing goods or packaging which consist of, or contain registered copyrighted material, have you checked or established a reliable procedure to ensure that it is authorized and genuine? If you are importing sound recordings of live performances, were the recordings authorized?

3. Have you checked or developed a reliable procedure to see if your merchandise is subject to an International Trade Commission or court ordered exclusion order?

4. Have you established a reliable procedure to ensure that you maintain and can produce any required entry documentation and supporting information?

Miscellaneous Questions

1. Have you taken measures or developed reliable procedures to ensure that your merchandise complies with other agency requirements (e.g., FDA, EPA/DOT, CPSC, FTC, Agriculture, etc.) prior to or upon entry, including the procurement of any necessary licenses or permits?

2. Have you taken measures or developed reliable procedures to check to see if your goods are subject to a Commerce Department dumping or countervailing duty investigation or determination, and if so, have you complied or developed reliable procedures to ensure compliance with Customs reporting requirements upon entry (e.g., 19 CFR 141.61)?

3. Is your merchandise subject to quota/visa requirements, and if so, have you provided or developed a reliable procedure to provide a correct visa for the goods upon entry?

4. Have you taken reliable measures to ensure and verify that you are filing the correct type of Customs entry (e.g., TIB, T&E, consumption entry, mail entry, etc.), as well as ensure that you have the right to make entry under the Customs Regulations?

Additional Questions for Textile and Apparel Importers

Note: Section 333 of the Uruguay Round Implementation Act (19 U.S.C. 1592a) authorizes the Secretary of the Treasury to publish a list of foreign producers, manufacturers, suppliers, sellers, exporters, or other foreign persons who have been found to have violated 19 U.S.C. 1592 by using certain false, fraudulent or counterfeit documentation, labeling, or prohibited transshipment practices in connection with textiles and apparel products. Section 1592a also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Under section 1592a, reliance solely upon information regarding the imported product from a person named on the list does not constitute the exercise of reasonable care. Textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must rely on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

1. Has the importer had a prior relationship with the named party?

2. Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

3. Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

4. Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

5. Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

6. Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

7. What is the history of this country regarding this commodity?

8. Have you asked questions of your supplier regarding the origin of the product?

9. Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

Dated: December 1, 1997.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 97–31802 Filed 12–3–97; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Termination of Authority: Munich American Reinsurance Company, Munich Reinsurance Company, U.S. Branch

SUMMARY: (Dept. Circ. 570, 1997—Rev., Supp. No. 3).

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch (202) 874–7102.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificates of Authority issued by the Treasury to Munich American Reinsurance Company and Munich Reinsurance Company, U.S. Branch, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety and as an acceptable reinsuring company on Federal bonds are hereby terminated.

Munich American Reinsurance Company was last listed as an acceptable surety on Federal bonds at 62 FR 35567, July 1, 1997 and Munich

Reinsurance Company, U.S. Branch, was last listed as an acceptable reinsuring company on Federal bonds at 62 FR 35581, July 1, 1997.

With respect to any bonds currently in force with both these companies, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted. In addition, bonds that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00509–8.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: November 20, 1997.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–31807 Filed 12–3–97; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8498

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8498, Program Sponsor Agreement for Continuing Education for Enrolled Agents.

DATES: Written comments should be received on or before February 2, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Program Sponsor Agreement for Continuing Education for Enrolled Agents.

OMB Number: 1545–1459.

Form Number: Forms 8498.

Abstract: Form 8498 is used by the Director of Practice to determine the qualifications of those individuals or organizations seeking to present continuing professional educational programs for persons enrolled to practice before the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 300.

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 26, 1997.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 97–31805 Filed 12–3–97; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Regional Scholar Exchange Program With the New Independent States and Freedom Support Act Fellowships in Contemporary Issues

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, European Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations with at least four years of experience in conducting international exchange programs with the New Independent States and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop and administer the recruitment, selection, orientation, placement, monitoring, evaluation, and alumni activities for two programs:

The Regional Scholar Exchange Program with the new Independent States: Research fellowships for four months and six months at host institutions in the United States for approximately 130 highly qualified advanced graduate students pursuing dissertation research and university faculty and scholars at the early stages of their careers in one of twenty-five designated fields of the social sciences and humanities who are citizens of Armenia, Azerbaijan*, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan and for research fellowships for four months and six months at host institutions in the New Independent States for approximately twenty advanced graduate student pursuing dissertation research or special projects

and university faculty in one of twenty-five designated fields of the social sciences and humanities who are citizens of the United States.

The Freedom Support Act Fellowships in Contemporary Issues: Research fellowships for four months at host institutions in the United States for approximately 75 highly qualified practitioners in diverse professions in the public, private, and not-for-profit sectors who are citizens of Armenia, Azerbaijan*, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzebekistan and who are shaping public policy or otherwise contributing to the transformation of their societies in one of five designated areas: Sustainable Growth and Economic Development; Democratization, Human Rights and the Rule of Law; Political, Military, Security, and Public Policy Issues; Strengthening Civil Society; Internet, the Communications Revolution, and Intellectual Property Rights.

Interested organizations should read the complete **Federal Register** Announcement and request a Solicitation Package from USIA prior to preparing a proposal.

• **Please note:** Programs with Azerbaijan are subject to the restrictions of Section 907 of the Freedom Support Act of 1992: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities.

Both programs are merit-based open competitions that must be conducted nationally in the home countries of the applicants. Applicants who have participated in a USIA-sponsored academic program of more than six weeks after March 1, 1997 are not eligible to receive fellowships.

Each program has separate conditions and requirements which are stated in this announcement and detailed in the full Solicitation Package. Organizations should apply for an assistance award for both programs and should submit a single proposal and a single budget to address the administration of both programs. Applicant organizations may apply to administer the programs individually, or via a subcontract arrangement as long as one organization is designated to be the recipient of the grant, or as a consortia in partnership with other organizations where each applicant organization submits a separate proposal and separate budget that cites the division of labor and duties among the members. USIA anticipates awarding one or two assistance awards for the administration of the programs cited in this announcement. Awards are expected to begin no earlier than May 1, 1998 and must be completed by October 31, 2000.

Applicant organizations must demonstrate the ability to administer all aspects of both programs, including publicity, advertisement, recruitment, selection, placement, orientation, Fellow monitoring and support, logistics, financial management, evaluation, and alumni tracking and programming.

Overall grant making authority for the Regional Scholar Exchange Program is contained in the mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program cited above is provided through the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended. Programs shall also maintain their scholarly integrity and shall meet the highest standards of academic excellence.

Overall grant making authority for the Freedom Support Act Fellowships in Contemporary Issues is made possible through legislation sponsored by the U.S. Congress and incorporated in the Foreign Relations Authorization Act of FY 1993. The legislation was established to assist the economic and democratic development of the New Independent States of the former Soviet Union. The funding authority for the program cited above is provided through the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds. USIA reserves the right to reduce, revise, or increase the proposal budgets in accordance with the needs of the programs.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/AEE–98–07.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, February 12, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. It is the responsibility of the applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Division of Academic Exchanges, European Programs Branch, E/AEE, Room 246, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; telephone number (202) 205–0525; fax: (202) 260–7985; Internet address treed@usia.gov to request a Solicitation Package containing more detailed award criteria. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire Solicitations Package may be received via the Bureau's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Manager Rhonda E. Boris on all inquiries and correspondences. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and 14 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEE–98–07, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review,

with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY, FREEDOM AND DEMOCRACY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy'', USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION: The Regional Scholar Exchange Program empowers outstanding citizens of the NIS and the U.S. who are committed to careers in academia to obtain access to the resource materials and specialists of the host country in order to conduct research and consult with colleagues on specific topics in one of twenty-five designated fields of the social sciences and humanities, write scholarly articles, dissertations, and books, audit classes, deliver occasional lectures, and participate in academic conferences with the goal of contributing to the advancement of higher education, scholarship, and university teaching in their academic fields in their home countries. NIS participants will be expected to begin their fellowships in the U.S. as a group at a program orientation in Washington, D.C. in late August 1999 and attend a pre-departure orientation in their home countries in February 1999. However, in some cases where it is necessary, a limited number of NIS participants may begin their U.S. programs at other appropriate times during the academic year. U.S. participants will be expected to begin their fellowships in the NIS at appropriate times in summer and fall 1999 and attend a program orientation in their host countries. At the end of their fellowships, all participants must return immediately to their home countries.

The Freedom Support Act Fellowships in Contemporary Issues empower outstanding citizens of the New Independent States who are practitioners in diverse fields to obtain access to the resource materials and specialists of the U.S. in order to conduct research and policy analysis on specific topics in one of five designated areas, write reports, articles, and studies, deliver lectures, and engage counterparts in the United States with the goal of framing the terms of debate in their fields and playing a more active role in consolidating the transition to democracy, free markets, and civil society in their home countries. Participants will be expected to begin their fellowships in the U.S. as a group at a program orientation in Washington, D.C. in March 1999 and attend a pre-departure orientation in their home countries in February 1999. At the end of their fellowships, all NIS participants must return immediately to their home countries.

Further details about specific program requirements and additional information can be found in the Project Objectives, Goals, and Implementation (POGI) Statement which are part of the full Solicitation Package.

Guidelines

Visa/Health Insurance/Tax Requirements: Programs must comply with J–1 visa regulations. Exchange program regulations require that all J visa holders carry health and accident insurance. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal.

Proposed Budget

Funding for the FY 1998 Regional Scholar Exchange Program is anticipated at $2,000,000. Funding for the FY 1998 Freedom Support Act Fellowships in Contemporary Issues is anticipated at $955,000.

Applicant organizations must submit a comprehensive line item budget request for general program costs, participant program costs, and administrative costs based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget and a budget narrative demonstrating how costs were derived. Organizations whose proposals include an administrative budget that is less than 20% of the grant amount requested from the USIA will be given preference.

Allowable costs for each category include the following:

(1) General Program Costs
(2) Participant Program Costs
(3) U.S. Administrative Costs
(4) NIS Administrative Costs
(5) Start Up for FY 1999 Recruitment

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation.

1. *Quality of the program plan:* Proposals should include academic rigor, thorough conception of program, demonstration of meeting participants' needs, contributions to understanding the partner country, specific details of recruitment, selection, placement, monitoring, alumni activities, alumni tracking, and relevance to USIA's mission.

2. *Program planning and organizational capacity:* A detailed work plan citing all critical program components and timeline should demonstrate the organization's logistical and administrative capacity to implement both programs. Proposals must demonstrate how the organization

and its staff will meet both programs' objectives. Proposed personnel and organizational resources must be adequate and appropriate to implement the program in each country.

3. *Organization's track record:* Relevant USIA and outside assessments of the organization's experience with academic exchanges with the NIS, including responsible fiscal management and full compliance with all reporting requirements for past grants as determined by USIA's Office of Contracts.

4. *Multiplier effect/impact:* Proposed programs must demonstrate an impact on the wider community through the sharing of information and the establishment of long-term institutional and individual linkages.

5. *Cost-effectiveness:* A key measure of cost-effectiveness is USIA's cost per participant. This is the total funds requested from USIA divided by the number of participant-months (number of participants multiplied by the number of program months). Overhead and administrative costs, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

6. *Cost-sharing:* Preference will be given to proposals that seek to maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

7. *Value of U.S.-partner country relations:* The assessment by USIA's geographic area office of the need potential impact, and significance of the project with the partner country.

8. *Support of diversity and pluralism:* Proposals should demonstrate substantive support of the Bureau's policy on diversity through the recruitment, selection and placement of participants, to the extent feasible for organizations.

9. *Follow-on activities:* Proposals should provide a plan for alumni activities and other follow on programs (without USIA support) which ensures that USIA supported programs are not isolated events. Proposals should include a plan for alumni tracking that demonstrates the willingness to provide data to and coordinate tracking with USIA and USIS posts.

10. *Program evaluation:* Proposals should include a plan to evaluate the program's success. A draft survey questionnaire plus a description of a methodology to be used to link outcomes to original project objectives is required.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Options for Renewals

Subject to the availability of funding for FY 1999 and FY 2000, and the satisfactory performance of grant programs, USIA may invite grantee organizations to submit proposals for renewal assistance awards for two fiscal year cycles.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 1, 1997.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 97–31787 Filed 12–3–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

FY 1998 Ron Brown Fellowship Program

ACTION: Request for proposals.

SUMMARY: Subject to the availability of funds for FY 1998, the Office of Academic Programs, Academic Exchanges Division, European Branch of the United States Information Agency's Bureau of Education and Cultural Affairs announces an open competition for an assistance award. American public or private nonprofit organizations with at least four years of experience in conducting international academic exchange programs and meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop and administer the FY 1998 Ron Brown Fellowship Program. Preference will be given to organizations that have placement experience at the graduate level and a demonstrated ability to conduct academic exchange programs in Central and Eastern Europe. Organizations are invited to submit a proposal with a budget not to exceed $2,000,000 to develop and administer the final selection (from a pool of applicants), placement, orientation, monitoring, evaluation and follow-on/alumni activities of at least 42 Fellows from the following countries: Albania, Bosnia, Bulgaria, Croatia, Hungary, Macedonia, Poland, Romania, Serbia and Solvenia. Participants will be enrolled in two-year degree programs, or in one-year non-degree professional development programs (except for the one-year degree programs in law) at accredited U.S. academic institutions for study at the Masters' level in the fields of business administration, economics, education administration/civic education, environmental policy/resource management, journalism/mass communication, law, public administration and public policy.

Please Note: This program will not support Ph.D. studies.

Overall grant making authority for the Ron Brown Fellowship Program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

The funding authority for the program cited above is provided through the Support for East European Democracies (SEED) Act of 1989, targeted to advance the democratic and economic transition of Central and Eastern Europe. In order to comply with mandates for this program, grantee organization is required to keep track of the spending for each of the ten countries under the FY98 Ron Brown Fellowship Program. Specific country allocations will be provided at the time of the award. Funds allocated for one country should not be used to support Fellows from other countries.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT NAME AND NUMBER: All communications with USIA concerning this announcement should refer to: The Ron Brown Fellowship Program, reference number E/AEE–98–05.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, D.C. time on Monday, January 26, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Academic Exchanges Division, European Branch, E/AEE Room 238, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; Telephone: (202) 619–4420; Fax: (202) 619–4927; Internet: TREED@USIA.GOV to request a Solicitation Package containing more detailed information. Please request required application forms and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire package may be received via the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling (202) 401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Effie Wingate on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and seven copies of the completed application, including required forms, should be sent to: U.S. Information Agency, Ref.: E/AEE–98–05, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. This material must be provided in ASCII text (DOS) formatted with a maximum line length of 65 characters. USIA will transmit these files electronically to U.S. Information Service (USIS) posts and Fulbright Commissions overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grant review process.

DIVERSITY, FREEDOM AND DEMOCRACY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, race, gender, religion, geographic, location, socioeconomic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The FY 1998 Ron Brown Fellowship Program will provide funding for at least 42 fellowships to citizens from Albania, Bosnia, Bulgaria, Croatia, Hungary, Macedonia, Poland, Romania, Serbia and Slovenia. Fellowships will be distrubted according to specified country-quotas. The goal of the Ron Brown program is to provide an opportunity for university graduates and young professionals who are selected through open, merit-based competition in the aforementioned nine European countries to participate in quality graduate study programs in the fields of business administration, economics, education administration/civic education, environmental policy/resource management, journalism/mass communication, law, public administration and public policy at accredited universities throughout the United States. Fellowships will be awarded for one-year, non-degree professional development programs, except for one-year degree programs in law, or for two-year degree granting programs. Program enhancements such as workshops, professional enrichment activities, internships, alumni conferences, networking, etc. are integral components of the Ron Brown Fellowship Program and highly encouraged. Internships of up to six months for Fellows in one-year programs and up to three months for Fellows in two-year programs are recommended. USIA's goal for 1998 is to award the greater number of Fellowships for two-year degree programs, and to attain equitable representation of the eight eligible fields while achieving wide distribution among the U.S. host universities. Clustering of Fellows should be avoided with no more than three Fellows at any one university.

The Ron Brown Fellowship Program will not support Ph.D. programs.

Guidelines

For 1998, program advertisement and participant recruitment will be the responsibility of the United States Information Service (USIS) posts and/or the Fulbright commissions. USIS posts and/or commissions will screen applications for eligibility, arrange for TOEFL, GMAT and GRE testing where possible, conduct personal interviews, and compile a dossier on each qualified applicant. Each USIS post and/or commission will compile a pool of applicants to be forwarded to the administering organization for the final selection.

Applicants are asked to develop a program plan to conduct the final selection, placement, monitoring, follow-on and alumni activities. The duration of the program should be for two academic years, 1998–99 and 1999–2000. The program may not begin before May 1, 1998, and must be completed by December 31, 2000. Proposals should address and discuss in detail the following areas:

1. Final Selection

Describe in detail the process for the final selection of Fellows including method of reviewing a pool of qualified applications submitted by USIS posts and/or Fulbright commissions; specific details about the final selection committee(s); and notification of selectees and non-selectees.

Please note: As in previous years, advertising, recruitment, screening and semi-final selection will be conducted by the USIS posts and/or Fulbright commissions in the participating countries.

2. Placement of Fellows

Describe criteria for selecting host universities and measures to ensure participants' academic and cultural needs are met.

3. Notification

Describe plans for notifying applicants who have been selected for an award, including timely confirmation of placement, scheduling of pre-departure orientation, and all logistical arrangements.

4. Special Programs

Describe provisions for ESL or pre-academic programs, if necessary;

5. Orientation

Describe plans for pre-departure, post-arrival and/or pre-academic orientation programs.

6. Enrichment Activities

Describe arrangements for cultural and professional development activities, internships, and other program enhancements including recommendations for workshops and alumni activities.

7. Monitoring/Evaluation/Tracking

Describe methodologies for on-going monitoring and evaluation and adjustment of program accordingly. Mechanisms for alumni networking and alumni tracking should also be detailed.

8. Alumni Activities

Ron Brown Alumni Associations were formed in several participating countries in October 1997. Describe plans to assist the development and expansion of these fledgling associations.

9. Program Identity

Describe ways you will ensure that participants and alumni identify themselves as Ron Brown Fellows or Ron Brown Alumni.

10. Personnel

Proposals should include curriculum vitae of personnel assigned to administer the Ron Brown program.

Participants

Fellows will be selected from a pool of applicants with a variety of professional and educational backgrounds. Since one of the purposes of the fellowships is to promote the development of professional expertise among the future leaders of Central and Eastern Europe, grant recipients should ideally be in the early stages of their careers, with perhaps a few years of work experience, a demonstrated ability for leadership, a clearly expressed purpose for studying in the United States, and a commitment to return home at the end of their fellowships to share their knowledge and skills in the development of their countries. Fellows must be under the age of forty, possess the equivalent of a bachelor's degree, and demonstrate fluency in spoken and written English (or the ability to attain such a level following a limited ESL program prior to the beginning of their studies).

Visa/Insurance/Tax Requirements

All foreign participants must be sponsored under an Exchange Visitors Program on a J visa. Programs must comply with J–1 visa regulations and should reference this adherence in the proposal narrative. Ron Brown Fellows must comply with the two-year home residency requirement as stipulated by the J–visa guidelines. It is the expressed intent of this program that Fellows return immediately to their home country following completion of the academic and professional components of their program. Please refer to program specific guidelines in the Application Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes, as applicable. Organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Participants will be covered by USIA-sponsored Health and Accident Insurance. The administering organization will be responsible for enrolling the participants in the insurance program.

Proposed Budget

Funding for the FY 1998 Ron Brown Fellowship Program is anticipated at $2,000,000. Applicants must submit a comprehensive line item budget for general program costs, participant program cost, alumni costs, and administrative costs. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. Please refer to the application packet for complete formatting instructions. Preference will be given to organizations whose administrative costs, including indirect costs, are less than 20% of the total request from USIA.

USIA reserves the right to reduce, revise, or increase the proposal budget in accordance with the needs of the program.

Allowable costs for the program include the following:

(1) General Program Costs
(2) Participant Program Costs
(3) U.S. Administrative Costs
(4) Overseas Administrative Costs
(5) Alumni Activities

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Medical insurance for participants will be paid directly by USIA and, therefore, should not be included as a line-item cost in the program budget. However, a modest line-item may be included for health insurance for universities not accepting the USIA policy.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIS posts overseas, where appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program

Proposals should include academic rigor, thorough conception of project, demonstration of meeting participant needs, contributions to understanding the partner countries, specific details of selection, placement, monitoring, follow-on plan, alumni activities, alumni tracking, evaluation plan and relevance to USIA's mission.

2. Program Planning/Institutional Capacity

A detailed agenda and relevant work plan should demonstrate substantive undertakings and the organization's logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposed personnel and organizational resources should be adequate and appropriate to implement the program and achieve project goals.

3. Organization's Track Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. Multiplier Effect/Impact

Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term linkages.

5. Cost-Effectiveness/Cost-Sharing

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Area Expertise

Proposals should demonstrate the organization's expertise and capacity to conduct graduate level academic exchange programs in Central and Eastern Europe.

7. Placement Experience

Proposals should demonstrate the organization's ability and experience with placements at U.S. universities at the graduate level.

8. Professional and Academic Contacts

Proposals should demonstrate substantive staff knowledge of the relevant academic fields and professions to ensure productive engagement with professional and academic contacts in every phase of program planning and implementation, including the arrangement of internships and selection panels.

9. Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity through the selection and placement of participants, to the extent feasible for organizations.

10. Project Evaluation/Follow-On Activities

Proposals should include a plan to evaluate the program's success. A draft survey questionnaire plus a description of a methodology to be used to link outcomes to original project objectives is required. Proposals should provide a plan for alumni activities and other follow-on programs (without USIA support) which ensures that USIA-supported programs are not isolated events. Proposals should include a plan for alumni tracking that demonstrates the willingness to provide data to and coordinate tracking with USIA and USIS posts and/or Fulbright commissions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposed budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about May 1, 1998. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: December 1, 1997.

Robert L. Earle,

Deputy Associate Director, Educational and Cultural Affairs.

[FR Doc. 97–31786 Filed 12–3–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603 *et seq.*) there will be a meeting of the Cultural Property Advisory Committee on December 19, 1997, from approximately 9:00 a.m. to approximately 4:00 p.m., at the United States Information Agency, Washington, D.C. Pursuant to 19 U.S.C. 2605(g), the Committee will review the status of implementation of the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of El Salvador Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological Material from the Prehispanic Cultures of the Republic of El Salvador, signed in March 1995. This portion of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

The Committee's agenda will also include a discussion of its internal procedures for developing findings and recommendations for bilateral cultural property agreements and emergency measures. This portion of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(2). The closed portions of the meeting will be from approximately 10:30 a.m. to approximately 4:00 p.m.

In addition, the Committee will review a CD-Rom image database project and a worldwide website project being developed in support of the ongoing efforts of the Committee and the Agency to implement the 1970 UNESCO Convention. This portion of the meeting will be open from approximately 9:00 a.m. to approximately 10:30 a.m. during which time public comment concerning matters before the Committee will be invited. Seating is limited. Persons wishing to attend this portion of the meeting must notify Cultural Property staff at 202–619–6612 by 12:00 Noon (EST) Thursday, December 18, 1997, to arrange for admission.

Dated: November 28, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

Determination to Close a Portion of the Meeting of the Cultural Property Advisory Committee, December 19, 1997

In accordance with 5 U.S.C. 552b(c)(9)(B), 19 U.S.C. 2605(h), and 5 U.S.C. 552b(c)(2), I hereby determine that portions of the Cultural Property Advisory Committee meeting on December 19, 1997, during which there will be discussions involving (a) information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, and (b) the internal operating procedures of the Committee, will be closed.

Dated: November 28, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 97–31785 Filed 12–3–97; 8:45 am]

BILLING CODE 8230–01–M

federal register

Thursday
December 4, 1997

Part II

Department of Health and Human Services

Food and Drug Administration

International Conference on Harmonisation; Guidance on Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes; Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D–0017]

International Conference on Harmonisation; Guidance on Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on a Limit Dose and Related Notes; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled ''S1C(R) Addendum to 'Dose Selection for Carcinogenicity Studies of Pharmaceuticals': Addition of a Limit Dose and Related Notes.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance is intended to define the conditions under which it would be considered acceptable to use a ''limit dose'' for the high dose selection of nongenotoxic pharmaceuticals in long-term carcinogenicity studies, and is an addendum to an earlier ICH guidance on criteria for establishing uniformity among international regulatory agencies for dose selection for carcinogenicity studies of human pharmaceuticals.

DATES: Effective December 4, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6758.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of April 2, 1997 (62 FR 15715), FDA published a draft tripartite guideline entitled ''Dose Selection for Carcinogenicity Studies of Pharmaceuticals: Addendum on the Limit Dose'' (S1C(R)). The notice gave interested persons an opportunity to submit comments by June 2, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 17, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The guidance is an addendum to an ICH final guidance published in the **Federal Register** of March 1, 1995 (60 FR 11278), entitled ''Dose Selection for Carcinogenicity Studies of Pharmaceuticals.'' The guidance is intended to define the conditions under which it would be considered acceptable to use a ''limit dose'' for the high dose selection of nongenotoxic pharmaceuticals in long-term carcinogenicity studies.

This guidance represents the agency's current thinking on dose selection for carcinogenicity studies of pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet (http://www.fda.gov/cder/guidance.htm).

The text of the guidance follows:

''S1C(R) Addendum to 'Dose Selection for Carcinogenicity Studies of Pharmaceuticals': Addition of a Limit Dose and Related Notes''[1]

Limit Dose

In determining the high dose for carcinogenicity studies using the approaches outlined in this guidance, it may not be necessary to exceed a dose of 1500 milligrams (mg)/kilograms (kg)/day (Note 1). This limit dose applies only in cases where there is no evidence of genotoxicity and where the maximum recommended human dose does not exceed 500 mg/day (Note 2).

Data should be provided comparing exposure of rodents and humans to drug and

[1] This guidance represents the agency's current thinking on dose selection for carcinogenicity studies of pharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

metabolites primarily to support dose selection for and interpretation of the carcinogenicity study. Based on such information, there may be cases where the limit of 1500 mg/kg/day is not acceptable because it cannot be assured that animal exposure after 1500 mg/kg/day is sufficiently high compared to the exposure achieved in humans. The rodent systemic exposure at 1500 mg/kg/day should be greater by at least an order of magnitude than human exposure measured at the intended human therapeutic dose. [If this is not the case, efforts should be made to increase the rodent exposure or to reconsider the animal model in a case-by-case approach.] If the human dose exceeds 500 mg/day, the high dose may be increased up to the maximum feasible dose.

Note 1

Review of the FDA carcinogenicity database of nearly 900 carcinogenicity tests indicated that about 20 tests had been conducted that used doses of 1000 mg/kg or greater as the highest dose tested. About 10 of these tests were considered as having demonstrated a carcinogenic response. Seven of these were positive only at or above 1000 mg/kg, including two that were positive in two species (in neither case were doses above 1000 mg/kg necessary to detect the carcinogenic response in both species, but rather in only one of the two species was a dose greater than 1000 mg/kg necessary).

Some of the one species positives were also only positive at doses greater than 1000 mg/kg. In one case where the drug was considered as demonstrating a significant tumor response only above 1000 mg/kg, it was positive in several nonstandard genotoxicity assays but not in standard genotoxicity studies. Regulatory action has resulted from some of these cases. Based on these results, the limit dose for carcinogenicity testing should be 1500 mg/kg rather than 1000 mg/kg to eliminate the risk that a genotoxic carcinogen will not be able to be identified as a result of adoption of a limit dose of 1000 mg/kg.

Note 2

It has been agreed that if a nongenotoxic drug is only positive in rodents at doses above those producing a 25-fold exposure over humans, such finding would not be considered likely to pose a relevant risk to humans.

It has been shown that systemic exposure comparisons between rodents and humans are better estimated by dose using mg/square meters (m^2) than using mg/kg (Note 4 of the S1C document ''Dose Selection for Carcinogenicity Studies of Pharmaceuticals''). Therefore, the human dose should be at least 25-fold lower on a mg/m^2 basis than the high dose in the carcinogenicity study. The factor, 6–7 (6.5), is used to convert rat doses from mg/kg to mg/m^2 and 40 is used to convert human doses from mg/kg to mg/m^2 . Thus, the estimated systemic exposure ratio of 25-fold rodent to human is equal to about a 25-fold mg/m^2 ratio or a 150-fold mg/kg ratio ($150 \approx 25 \times 40/6.5$). Therefore, a human dose below 10 mg/kg/day (about 500 mg/day or less) could be tested in rats at 1500 mg/kg as the high dose.

Dated: November 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31780 Filed 12–4–97; 8:45 am]

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LIST OF PUBLIC LAWS

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S. 819/P.L. 105–122

To designate the United States courthouse at 200 South Washington Street in Alexandria, Virginia, as the ''Martin V. B. Bostetter, Jr. United States Courthouse''. (Dec. 1, 1997; 111 Stat. 2532)

S. 833/P.L. 105–123

To designate the Federal building courthouse at Public Square and Superior Avenue in Cleveland, Ohio, as the ''Howard M. Metzenbaum United States Courthouse''. (Dec. 1, 1997; 111 Stat. 2533)

S. 1228/P.L. 105–124

50 States Commemorative Coin Program Act (Dec. 1, 1997; 111 Stat. 2534)

S. 1354/P.L. 105–125

To amend the Communications Act of 1934 to provide for the designation of common carriers not subject to the jurisdiction of a State commission as eligible telecommunications carriers. (Dec. 1, 1997; 111 Stat. 2540)

S. 1378/P.L. 105–126

To extend the authorization of use of official mail in the location and recovery of missing children, and for other purposes. (Dec. 1, 1997; 111 Stat. 2542)

S. 1417/P.L. 105–127

Hispanic Cultural Center Act of 1997 (Dec. 1, 1997; 111 Stat. 2543)

S. 1505/P.L. 105–128

Museum and Library Services Technical and Conforming Amendments of 1997 (Dec. 1, 1997; 111 Stat. 2548)

S. 1507/P.L. 105–129

To amend the National Defense Authorization Act for Fiscal Year 1998 to make certain technical corrections. (Dec. 1, 1997; 111 Stat. 2551)

S. 1519/P.L. 105–130

Surface Transportation Extension Act of 1997 (Dec. 1, 1997; 111 Stat. 2552)

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